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NAVAL POSTGRADUATE SCHOOL

MONTEREY, CALIFORNIA

THESIS

**PRIVATE MOTIVE, HUMANITARIAN INTENT:
A THEORY OF ETHICALLY JUSTIFIED PRIVATE
INTERVENTION**

by

Edwin D. Morton III

June 2013

Thesis Advisor:
Second Reader:

Bradley J. Strawser
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**PRIVATE MOTIVE, HUMANITARIAN INTENT: A THEORY OF ETHICALLY
JUSTIFIED PRIVATE INTERVENTION**

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Submitted in partial fulfillment of the
requirements for the degree of

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**NAVAL POSTGRADUATE SCHOOL
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ABSTRACT

The usual instruments of humanitarian military intervention are the regular armed forces of a state, or a group of states, but even when gross crimes such as genocide are committed and an intervention becomes morally obligatory, states are reluctant to risk the lives of their own soldiers. This moral tension is at the root of the international community's failure to act in most cases. However, for states to fulfill the duty to prevent crimes against humanity, and at the same time protect their soldiers in the interests of national defense, a third party could be employed. In this thesis, the case will be made that the use of private military companies (PMCs) for humanitarian intervention is morally preferable to the employment of a state's armed forces. To serve as a moral guideline for the concept, a theory of ethically justifiable private intervention has been formulated based on elements of Just War Theory and James Pattison's Moderate Instrumentalist Approach to humanitarian intervention. Three case studies are analyzed to conclude that, under certain conditions, humanitarian intervention conducted by PMCs is a morally permissible option.

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LIST OF ACRONYMS AND ABBREVIATIONS

ABC	Australian Broadcasting Commission
APC	All People's Congress
AU	African Union
BBC	British Broadcasting Commission
BCL	Bougainville Copper Limited
BIG	Bougainville Interim Government
BRA	Bougainville Revolutionary Army
DDE	Doctrine of Double Effect
DoD	Department of Defense
DRC	Democratic Republic of the Congo
EO	Executive Outcomes
EU	European Union
FAR	<i>Forces Armées Rwandaises</i>
FNLA	<i>Frente Nacional de Libertação de Angola</i>
GSG	Ghurka Security Guards
ICISS	International Commission on Intervention and State Sovereignty
ICRC	International Committee of the Red Cross
IDP	Internally Displaced Persons
IHL	International Humanitarian Law
INGO	International Non-governmental Organization
ISOA	International Stability Operations Association
ITAR	International Traffic in Arms Regulation
JWT	Just War Theory
MPLA	<i>Movimento Popular de Libertação de Angola</i>
MPRI	Military Professional Resources, Incorporated
MRND	<i>Mouvement Révolutionnaire National pour le Développement</i>
NGO	Non-governmental Organization
NPRC	National Provisional Ruling Council
OAU	Organization of African Unity
OBE	Officer of the Most Excellent Order of the British Empire

PARMEHUTU	<i>Parti du Mouvement de l'Emancipation des Bahutu</i>
PLA	Panguna Landowners Association
PMC	Private Military Company
PMSC	Private Military and Security Company
PNG	Papua New Guinea
PNGDF	Papua New Guinea Defense Force
PSC	Private Security Company
PSYOP	Psychological Operations
R2P	Responsibility to Protect
ROE	Rules of Engagement
RPF	Rwandan Patriotic Front
RPNGC	Royal Papua New Guinea Constabulary
RTL	<i>Radio Télévision Libre des Mille Collines</i>
RUF	Revolutionary United Front
SADF	South African Defense Forces
SAS	Special Air Service
SFU	Special Forces Unit
SHIRBRIG	Multinational Stand-By High Readiness Brigade for United Nations Operations
SLA	Sierra Leone Army
SLCU	Sierra Leone Commando Unit
TNC	Trans-national Corporations
UN	United Nations
UNAMID	United Nations Assistance Mission for Darfur
UNAMIR	United Nations Assistance Mission for Rwanda
UNAMSIL	United Nations Assistance Mission for Sierra Leone
UNAR	<i>Union Nationale Rwandaise</i>
UNEPS	United Nations Emergency Peace Service
UNHRC	United Nations Human Rights Commission
UNITAF	Unified Task Force
UNPROFOR	United Nations Protection Force
UNSAS	United Nations Standby Arrangements System

UNSC

United Nations Security Council

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I. INTRODUCTION

In 1994, hundreds of thousands of people were brutally murdered in Rwanda; men and women, young and old—Tutsis and moderate Hutus viciously bludgeoned or hacked to death by extremist Hutus with cheap clubs, farm tools, or machetes. The international community watched the genocide with full knowledge of the events as they took place and did virtually nothing about it. In fact, representatives of numerous countries ignored the killing even though they “were stumbling on corpses” while evacuating their expatriates.¹ Not only was the killing allowed to continue unabated, it has also been speculated that the world’s collective inaction served to embolden the murderers, enabling the genocide’s spread throughout the country until the number of deaths reached nearly one million.²

General Romeo Dallaire, commander of the United Nations Assistance Mission for Rwanda (UNAMIR) troops during the genocide, is to this day convinced that he could have stopped the slaughter had he been given the means.³ With no standing army, however, the United Nations (UN) is dependent on member states’ willingness to send their own troops into harm’s way, and as a result, inadequate international support enabled the killing to continue. Dallaire did everything he could within his power, including requesting electronic warfare assets to jam Hutu radio transmissions that were promoting the genocide, but most of his appeals for troops, additional assets, or a revised mandate were ignored, denied, or passively resisted. Finally, as the death toll neared a half million, the United Nations Security Council (UNSC) authorized Resolution 918 to create UNAMIR 2, which authorized a change in the UN mandate to that of a humanitarian force, and a rapid deployment of new troops. Dallaire’s initial UNAMIR 2

¹ Romeo Dallaire quoted in United Nations’ “Memorial Conference on Rwanda Genocide Considers Ways to Ensure More Effective International Response in Future: Secretary-General Says Silence In Face of Past Genocide Must Be Replaced with ‘Global Clamour,’” “press release AFR/868, HQ/630, 26 March 2004, <http://www.un.org/News/Press/docs/2004/afr868.doc.htm>.

² Alison Des Forges, “Alas, We Knew,” *Foreign Affairs* 79, no. 3 (May 2000): 141.

³ Roméo Dallaire, *Shake Hands with the Devil: The Failure of Humanity in Rwanda* (New York: Carrol and Graf Publishers, 2003), 374.

plan for 5,500 troops was never realized, however, because member states continued to refuse support.⁴ Even a request to the 19 states taking part in the United Nations Standby Arrangements System (UNSAS) resulted in no contribution of forces.⁵ The world's most powerful nations simply did not deliver during one of mankind's greatest moments of need. Years later, Kofi Annan, the UN Assistant Secretary-General for Peacekeeping Operations at the time, said that

The international community had failed Rwanda, which must always leave it with a sense of bitter regret and abiding sorrow. If the international community had acted promptly, it could have stopped most of the killing. But neither the political will nor the troops had been there. If the United Nations, government officials and the international media had paid more attention to the gathering signs of disaster, it might have been averted...the international community was guilty of sins of omission.⁶

There were other sins, however. To avoid taking action in Rwanda, officials from all over the world, including the Clinton administration, quibbled over the use of the term "genocide" in reference to the atrocities taking place, ostensibly to avoid the moral obligation to intervene.⁷ The U.S. government's bureaucracy could be blamed for many deaths as the crisis in Rwanda was relegated to low-level officials who were unable to promote a meaningful response to the killings without the support of more senior officials. Once all American citizens had been satisfactorily evacuated though, officials in the White House, Pentagon, and the State Department lost interest in Rwanda.⁸ When General Dallaire requested one hundred armored personnel carriers (APCs) to facilitate the employment of the UNAMIR 2 force he anticipated, the U.S. government offered fifty. After much haggling and multiple payments of millions of dollars, "tons of rusting

⁴ Dallaire, *Shake Hands with the Devil*, 374–375.

⁵ Malcolm Hugh Patterson, *Privatising Peace: A Corporate Adjunct to United Nations Peacekeeping and Humanitarian Operations* (New York, Palgrave Macmillan, 2009), 17.

⁶ "Memorial Conference on Rwanda Genocide," paragraphs 15-16.

⁷ Dallaire, *Shake Hands with the Devil*, 374; Jared Cohen, *One Hundred Days of Silence: America and the Rwanda Genocide* (Lanham, MD: Rowman and Littlefield, 2007), 132; Alison Des Forges, *Leave None to Tell the Story: Genocide in Rwanda* (New York: Human Rights Watch, 1999), 595; Dore Gold, *Tower of Babel: How the United Nations Has Fueled Global Chaos* (New York: Crown Forum, 2004), 146–147.

⁸ Cohen, *One Hundred Days of Silence*, 95–96; Dallaire acknowledges that some U.S. senators did lobby in favor of an expanded humanitarian mission in Rwanda (Dallaire, *Shake Hands with the Devil*, 372 n1).

metal,” in the form of fifty stripped-down APCs were delivered to Uganda, with no trained drivers or method of transport to Rwanda, making them effectively useless. Likewise, the British provided antiquated trucks that almost immediately broke down.⁹ The UN had a hand in delaying action as well, by denying Dallaire’s requests for assets to counter the malicious Hutu information campaign or to secure arms caches and confiscate illegally acquired weapons from the civilian population, anything to slow or stop the killing.¹⁰

There were proponents of action, however. At some point it was suggested that a Private Military Company (PMC) be hired to create safe havens in Rwanda to protect refugees from the genocide.¹¹ In fact, the chief of a prominent PMC at the time, Executive Outcomes (EO), claims to have been contacted by a UN representative early in the crisis for a quote and to see whether EO could handle the job. Within 24 hours, the company responded with a four-phase plan to stabilize the situation and set conditions for a handover to the UN. The plan called for a six-month operation with a force of 1500 men, with air and fire support.¹² Kofi Annan considered the option but it was rejected when the subject of who would pay the \$100 million bill came up.¹³ Later, Annan said that “the world may not be ready to privatize peace.”¹⁴

Despite the shock and horror that followed Rwanda, and repeated pledges of “never again,” the scene repeated itself on a smaller scale the very next year, in 1995, at Srebrenica in the former Yugoslavia, where more than 7,500 Bosnian Muslims were massacred in a UN safe area.¹⁵ Similar stories have occurred, or are occurring, in Sudan, Darfur, and Eastern Congo—yet the international community has continually failed to

⁹ Dallaire, *Shake Hands with the Devil*, 375–376.

¹⁰ Dallaire, *Shake Hands with the Devil*, 167; the denial was signed by Kofi Annan.

¹¹ P. W. Singer, “Peacekeepers, Inc.,” *Policy Review* 119 (June 2003): 65.

¹² Eeben Barlow, *Executive Outcomes: Against All Odds* (Alberton, South Africa: Galago, 2007), 441.

¹³ Barlow puts the figure at U.S.\$100 million for a six month operation (Barlow, *Executive Outcomes*, 441), compared to the U.S.\$3 million the UN mission cost per day (Singer, “Peacekeepers, Inc.,” 65).

¹⁴ Jan Grofe, “Human Rights and Private Military Companies: A Double-Edged Sword too Dangerous to Use?” in *Private Military And Security Companies: Chances, Problems, Pitfalls and Prospects*, ed. Thomas Jäger and Gerhard Kümmel (Wiesbaden, Germany: Verlag für Sozialwissenschaften, 2007), 258.

¹⁵ “Netherlands and UN Blamed over Srebrenica Massacre,” *Guardian*, April 10, 2002, <http://www.guardian.co.uk/world/2002/apr/10/warcrimes1>.

stop it. The moral crime of this inaction is not in dispute, only what to do about it remains in question. A decade after the Rwandan genocide, Jan Grofe suggests that if coalition experience in Iraq (and Afghanistan) is an indicator, then the time for privatization may be at hand.¹⁶ By 2008 the numbers of private contractors outnumbered those of active-duty troops,¹⁷ and the huge numbers of contractors employed during both conflicts demonstrates not only the sheer numbers of willing participants from the private sector, but also the willingness of states to hire them. In fact, the activities of PMCs have grown to such an extent that it has been observed that modern armies would find it difficult to prosecute a war without them, and that the privatization of conflict may have “reached the point of no return.”¹⁸ Given these legions of contractors, only a small percentage of them would be required to transition the organization to combat. A major obstacle, however, is the enduring concern over the ethics of outsourcing the business of warfare.

Ethical issues with PMCs have escalated with the rise of PMCs themselves. From the 1990s to the present, the world has experienced an escalation in activity within the private military industry. Heavy demand for massive military formations in the global public sector vanished with the end of the Cold War, and the downsizing of militaries throughout the world that resulted created a substantial labor pool of well-trained and experienced professional soldiers.¹⁹ The market was also flooded with small arms from raided Cold War-era supplies, and the low cost of arming rebel troops enabled relatively small groups to destabilize nations all over the world in violent, yet strategically insignificant, conflicts.²⁰

Power struggles in poor countries are usually of little political importance to the major powers; nonetheless, these conflicts create significant humanitarian crises

¹⁶ Grofe, “Human Rights and Private Military Companies,” 258.

¹⁷ Ian Wing, *Private Military Companies and Military Operations* (Duntroon, Australia: Land Warfare Studies Centre, 2010), 15–16.

¹⁸ Fred Schreier and Marina Caparini, “Privatising Security: Law, Practice and Governance of Private Military and Security Companies,” *Geneva Centre for the Democratic Control of Armed Forces*, Occasional Paper No. 6 (March 2005): 1.

¹⁹ Singer, “Peacekeepers, Inc.,” 61.

²⁰ The “small arms” referred to are largely AK-47s and variants, which could be obtained in the early 2000s in bulk for about \$150 per weapon (C. J. Chivers, *The Gun* (New York: Simon and Schuster, 2010), 386–387); Singer, “Peacekeepers, Inc.,” 61.

wherever they occur, and the effects of mass killings or widespread starvation morally transcend political importance. Even in the case of intra-state conflicts where valid concerns over state sovereignty may be an issue, when a crisis warrants a permissible intervention, the international community may still have a moral obligation to intervene. On this reading of moral obligation, were such an obligation to occur, it is understood as an imperfect duty in the Kantian sense, because it is an unassigned duty. When a duty is assigned, based on a special relationship to the victimized population or a special capability, it becomes perfect.²¹ This being the case, perfect or imperfect, the obligation is at times at odds with the purpose of a state's armed forces, which is to defend its national interests. This disjunct leaves a state with an abiding moral tension in its duty to stop crimes against humanity versus its duty to protect its own citizens, and as a result states are oftentimes justifiably reluctant to deploy their own forces and risk any cost in lives to help non-citizens. Unwillingness to deploy state forces would not circumvent the obligation, however; it would still at least require some facilitation of intervention. When appropriate state forces are not available, and the international community is unable to provide an *ad hoc* force for intervention, the employment of a PMC could be a morally and operationally viable option, under certain circumstances.

The permissibility of forcibly occupying a foreign country with a private army with the aim of protecting its population from human rights abuses is not a foregone conclusion, however. To explore the possibility of ethical privatized humanitarian intervention, the ethics of humanitarian intervention itself must first be explored. To accomplish this, the framework provided by Just War Theory (JWT) will be used to consider the ethical concerns of humanitarian intervention.²² Because humanitarian intervention does not fall into the usual category of a war between two or more states,

²¹ Kok-Chor Tan, "The Duty to Protect," in *Humanitarian Intervention*, NOMOS XLVIII, ed. Terry Nardin and Melissa S. Williams (New York: New York University Press, 2006), 86–87; Tan characterizes the difference between perfect and imperfect duties as analogous to assigned and unassigned duties, respectively. That is, one is morally obligated to carry out a duty that is assigned to him; whereas, it is merely permissible, yet admirable, to carry out unassigned duties when they are carried out at a cost that is not too great.

²² Mona Fixdal and Dan Smith, "Humanitarian Intervention and Just War," *Mershon International Studies Review* 42 (1998): 283.

some special considerations must be made with regard to the *jus ad bellum*²³ criteria of JWT, especially proper authority, just cause, and right intention. These criteria are especially important in traditional JWT, and will prove useful as a component of a theory of ethically justified private intervention.²⁴

Once a version of JWT that is specific to humanitarian intervention is established, it is necessary to tailor the theory to fit PMCs. As the agent of intervention, PMCs are primarily concerned with *jus in bello*²⁵ considerations of JWT, although the principles of *jus ad bellum* cannot be ignored by the PMC. For example, an ethical private company does not accept just any principal client, and therefore, the principal's intentions must be scrutinized by the PMC as closely as his ability to pay. Concerning *jus in bello*, the conduct of a PMC while carrying out its mission is of paramount importance; the criteria must be examined to tailor traditional principles of proportionality and discrimination to modern humanitarian intervention. Indeed, James Pattison concludes that that a private intervention force should follow stricter versions of those traditional principles.²⁶ Furthermore, the principle of internal *jus in bello* has been added that concerns the treatment of the intervening force's own troops.²⁷ This criterion requires that a private intervening force respect the rights of its employees; that no child soldiers or conscripts are used, and that adequate protection and care are provided commensurate with the amount of risk they are expected to accept.

Therefore, the theory of ethically justified private intervention presented here will be in three parts: first, adherence to *jus ad bellum* principles of right authority, just cause, and right intention; second, *jus in bello* criteria of proportionality, discrimination, and

²³ *Jus ad bellum* are the criteria for justly going to war.

²⁴ Joseph Boyle, "Traditional Just War Theory and Humanitarian Intervention," in *Humanitarian Intervention*, NOMOS XLVIII, ed. Terry Nardin and Melissa S. Williams (New York: New York University Press, 2006), 35.

²⁵ *Jus in bello* are the criteria supporting ethical conduct in war.

²⁶ James Pattison, *Humanitarian Intervention and the Responsibility to Protect: Who Should Intervene?* (New York: Oxford University Press, 2010), 109.

²⁷ Pattison, *Humanitarian Intervention and the Responsibility to Protect*, 109–110; see also Brian Orend, *The Morality of War* (Peterborough, Ontario: Broadview Press, 2006), 127–136.

internal *jus in bello*; in the analysis of these six criteria, the need for a seventh criterion has been identified to ensure a responsible handover to a recognized authority. Therefore, the third part of the theory will consist of the *jus post bellum* criterion of just transfer of authority. Most studies are concerned only with the agent of intervention, while this study will hypothesize that the principal, or the employer of the PMC, is equally morally responsible, and thus potentially culpable. However, the hypothesis being tested in this thesis is that ethical private intervention can be justified under the guidelines of this theory.

To further aid the formulation of a theory of ethically justified private intervention, three case studies will be examined within the framework. The cases were selected based on criteria that establish their suitability, and for their extreme variation in the study variable (SV), which is that of a morally permissible private intervention. Given the limited number of true-life instances of privatized intervention, some license must be assumed to aid the theory's formulation, and hence, many aspects of the case studies could correctly be thought of as "thought experiments." The first case is the least so; the case of the PMC Executive Outcomes (EO) in the Sierra Leonean civil war in 1994 is arguably the most-often cited case of a successful military intervention by a PMC. The legendary speed and effectiveness with which EO defeated the Revolutionary United Front (RUF) is compelling, and provides the most appropriate case in which to consider the theory presented here. The second case is that of the PMC Sandline, hired by the prime minister of Papua New Guinea (PNG) to quell an uprising on the resource-rich island of Bougainville. This intervention was not humanitarian in nature and was not successful; however, it provides an interesting and useful commentary on the *jus ad bellum* criteria presented here. Counterfactual analysis will be used in both of these cases to speculate on what could have happened if conditions had been different. The final case is purely counterfactual, and essentially uses the plan conceived by EO staff to conduct an intervention in Rwanda. It has been well established that an intervention should have taken place; the thought experiment here will consider what could have happened if it had taken place using a PMC.

Finally, a further conceptual point will be examined. If the PMC option is still not accepted by any state or international organization, and the threat of crimes against

humanity proceeds unabated, then conceptually, the funding of intervention by a PMC could be underwritten by an International Non-governmental Organization (INGO) or even a private individual. This possibility presents myriad ethical issues, beginning with the requirement of proper authority. In situations where crimes of humanity exist, however, a scaled approach to the theory is required. Deborah Avant concludes that, under certain extreme circumstances, the private funding of private intervention could be permissible, but is not an option to be relied upon.²⁸ In the final case study of this thesis, the idea of private funding of a humanitarian intervention will be explored further.

The conclusion is that ethically justified private intervention is possible using not only the framework proposed here, but also with the guidance provided by international conventions and codes of ethics established in the industry. JWT is useful in an analysis of historical or counterfactual cases, and to provide general guidelines of conduct, but further codified industry specific and contractual ethical guidelines would be necessary for true success. These regulations exist now, and it may not be necessary to create more beyond situation-specific contractual guidelines. Given the international community's moral dilemma presented by the duty to stop crimes against humanity and the duty states have to protect its own citizens, PMCs present a morally plausible third option, and this third option could make a difference when genocide happens again.

A. LITERATURE REVIEW

The theoretical literature on humanitarian intervention, private military companies, and Just War Theory is reviewed in detail in the chapters that follow, so it will not be repeated here. All three categories are critical in the formulation of the theory of ethically justified private intervention to be presented in Chapter V, so they are presented separately in the sections that follow this introduction. A number of other works have suggested the principles of Just War Theory as an ethical guideline for

²⁸ Deborah Avant touches on this possibility with reference to transnational corporations, pointing out one of the many valid ethical dilemmas that comes with financing violent services; that to organize and carry out violent activities is to place oneself inside the governance process, and that to attempt to seize a role in the government of a foreign country by force is immoral (Deborah D. Avant, *The Market for Force: The Consequences of Privatizing Security* (New York: Cambridge University Press, 2005), 192); Another view of this may be that in the case of a failed state, this point becomes invalid as long as there is a clear plan to reinstitute local governance.

humanitarian intervention,²⁹ but no critical analysis of any formulated ethical guideline using actual or counterfactual cases is known to exist. This is the gap that this thesis seeks to fill.

The facts surrounding the case studies are derived from accounts written by people who were there: Eeben Barlow and Roelf Van Heerden in Sierra Leone; Tim Spicer and Sean Dorney in Papua New Guinea; and Roméo Dallaire and Alison Des Forges and in Rwanda. Most elements of the cases are based on these personal accounts; others come from analysis of news articles contemporary to the event or scholarly work conducted years later.

B. PURPOSE AND SCOPE

The purpose of this thesis is to formulate a theory of ethical military intervention by a private entity using forces provided privately, referred to as a theory of ethically justified private intervention. Ethical issues associated with the employment of PMCs for the purpose of humanitarian intervention will be explored with the aim to provide an ethical guideline for decision makers faced with the duty to prevent crimes against humanity, but without the support of state-sponsored military forces. This thesis hypothesizes that there is a moral obligation to intervene in response to crimes against humanity, and in the absence of state-sponsored forces, it can be permissible to outsource military intervention to a PMC under certain conditions.

Some assumptions are necessary for this thesis to proceed. First, it must be assumed that there could reasonably be a functional PMC to act as the agent, with the available resources to accept the mission, and the ability to carry it out in accordance with the terms of its contract. The manpower potential is a safe assumption, considering that the PMC Blackwater deployed thousands of security personnel to Iraq from 2003–2007.

²⁹ Including the ICISS Report, *The Responsibility to Protect* (December 2001), <http://responsibilitytoprotect.org/ICISS%20Report.pdf>.

The exact number of contractors deployed is not known, but it has been estimated that by 2008 they outnumbered U.S. troops, or were at least at a ratio of one-to-one.³⁰

Second, it must be assumed that for the purposes of this discussion, the PMCs available for employment understand that their success or failure in the private military industry depends on a general perception of their legitimacy, and that it is in their best interests to behave accordingly. David Shearer notes that this is generally the case,³¹ and since PMCs are a business dependent on follow-on employment, they are likely to be attentive to their reputation in the industry.

A final assumption is that there are organizations or individuals that exist with the means and motivation to fund a private military intervention. Considering that in 2013, there are 1,426 billionaires in the world,³² and that there are NGOs that command resources up to \$9 billion,³³ it is not unreasonable to believe that one among them might be willing to fund a mission of humanitarian intervention, if it were morally permissible. Very rich individuals have frequently made significant contributions to charitable causes that lie outside the realm of their responsibility to society, and notwithstanding the potentially violent nature of the proposed contribution, it follows that there are other individuals in existence that would be willing to make similar contributions.

C. DEFINITIONS

Some of the terminology used in this thesis requires clarification before proceeding.

³⁰ Jeremy Scahill, *Blackwater: The Rise of the World's Most Powerful Mercenary Army* (New York: Nation Books, 2007), 460; Dunigan lists slightly higher figures, at roughly 173,000 contractors to 146,000 U.S. troops in December 2008 (Molly Dunigan, *Victory for Hire: Private Security Companies' Impact on Military Effectiveness* (Stanford, CA: Stanford Security Studies, 2011), 171 n1); Mark Cancian calls 265,000 "a fairly reliable count," as of 2008 (Mark Cancian, "Contractors: The New Element of Military Force Structure," *Parameters* (Autumn 2008): 62.

³¹ Shearer, *Private Armies and Military Intervention*, 76.

³² Luisa Kroll, "Inside the 2013 Billionaires List: Facts and Figures," *Forbes*, 4 March 2013, <http://www.forbes.com/sites/luisakroll/2013/03/04/inside-the-2013-billionaires-list-facts-and-figures/>.

³³ "Special Feature: The Top 100 NGOs 2013 Edition," *The Global Journal*, 23 January 2013, <http://theglobaljournal.net/article/view/986/>.

A satisfactory definition of “humanitarian intervention” follows Terry Nardin, who defines “intervention” as “the exercise of authority by one state within the jurisdiction of another state, but without its permission.” He goes on to define armed humanitarian intervention as “when its aim is to protect innocent people who are not nationals of the intervening state from violence perpetrated or permitted by the government of the target state.”³⁴ Since the use of force is implied, it is not necessary to include “armed,” and so the words “humanitarian intervention” will be used alone.

The use of the term “permissible” is intended to have ethical connotation (not legal) and is used to denote an action that has moral justification. Moreover, a morally permissible action is not an assigned duty; that is, it is not obligatory, and is therefore an imperfect duty and not morally required. To undertake a permissible duty is admirable, but to self-assign a permissible duty makes it a perfect duty, and the agent accepts a responsibility and an obligation to successfully carry out that duty. The term “obligatory” is used interchangeably with “duty,” and is a perfect, assigned duty that the agent has a moral obligation to carry out. Furthermore, a duty determined to be “supererogatory,” is the act of going above and beyond in the performance of a duty that is not morally required.

The terms “private military and security company” (PMSC) and “private security company” (PSC) are used elsewhere in the literature. Both refer to companies that provide security services, while the former retains the ability to provide military services as well. Since this thesis is concerned with companies that provide military intervention services, including combat, the term “private military company” (PMC) will be used exclusively.³⁵

A careful treatment of the terms “mercenary” and “private military company” are in order here. The mercenary label has been problematic from the beginning. The notion

³⁴ Terry Nardin, “Introduction,” in *Humanitarian Intervention*, NOMOS XLVIII, ed. Terry Nardin and Melissa S. Williams (New York: New York University Press, 2006), 1.

³⁵ PMCs are referred to by Singer as “military provider firms.” See Singer, *Corporate Warriors*, 92–95; also James R. Davis, *Fortune’s Warriors: Private Armies and the New World Order* (Vancouver, British Columbia: Douglas and MacIntyre, 2002), 31.

that PMCs and mercenaries are one in the same is a very real dilemma; it has given rise to the application of ethical issues associated with mercenaries, and resultant rejection of the potential utility of PMCs.³⁶

A discussion of force-provider PMCs or contracted combatants in the context of military intervention is difficult without tackling the stigma of the term “mercenary.” Numerous authors have sought to define the term, with each coming to slightly different conclusions. Carlos Ortiz conceptualizes two methods from which to derive a definition: the strictly legal approach, or the generally accepted approach.³⁷ Most definitions are based on popular perceptions of mercenaries, not necessarily the legal definition. Still, the legal definition is important and will be covered here.

The legal definition of a mercenary is derived from the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, Article 47 of which relates to mercenaries. The article, in its entirety, is as follows:

1. A mercenary shall not have the right to be a combatant or a prisoner of war.
2. A mercenary is any person who:
 - (a) is specially recruited locally or abroad in order to fight in an armed conflict;
 - (b) does, in fact, take a direct part in the hostilities;
 - (c) is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a Party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of that Party;
 - (d) is neither a national of a Party to the conflict nor a resident of territory controlled by a Party to the conflict;

³⁶ David Shearer, *Private Armies and Military Intervention* (New York: Oxford University Press, 1998), Adelphi Paper 316, International Institute for Strategic Studies, 76.

³⁷ Carlos Ortiz, *Private Armed Forces and Global Security* (Santa Barbara, CA: Praeger, 2010), 55.

(e) is not a member of the armed forces of a Party to the conflict; and

(f) has not been sent by a State which is not a Party to the conflict on official duty as a member of its armed forces.³⁸

Notwithstanding the POW status exclusion, to be classified a mercenary the individual would have to meet all of the other six criteria. This alone makes the legal definition too complex to be conceptually useful, and coupled with the legal difficulty in proving that an individual is motivated by private gain, makes the definition effectively useless.³⁹ Two other conventions, the AU's 1977 Convention for the Elimination of Mercenarism in Africa, and the UN's 1989 International Convention against the Recruitment, Use, Financing and Training of Mercenaries both draw from Article 47 in their own definitions of mercenaries, and as a result, the definitions are no less problematic.⁴⁰ A famous quote about this definition sums up the problem, "any mercenary who cannot exclude himself from this definition should be shot—and his lawyer with him!"⁴¹

Other authors have sought to define mercenaries in more acceptable terms. Uwe Steinhoff defines a mercenary as "a person who is contracted to provide military services to groups other than his own (in terms of nation, ethnic group, class, etc.) and is ready to deliver this service even if this involves taking part in hostilities. Which groups are relevant depends on the nature of the conflict."⁴² This definition takes the financial

³⁸ ICRC, "International Humanitarian Law – Treaties and Documents," *ICRC.org*, <http://www.icrc.org/ihl.nsf/WebART/470-750057>.

³⁹ Ortiz, *Private Armed Forces and Global Security*, 56; see also ICRC, "Customary IHL, Rule 108. Mercenaries," *ICRC.org*, http://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule108.

⁴⁰ Ortiz, *Private Armed Forces and Global Security*, 56; see also "OAU Convention for the Elimination of Mercenarism In Africa," *Organisation of African Unity*, CM/817 (XXIX) Annex II Rev.1, 3 July 1977, http://www.africa-union.org/official_documents/Treaties_%20Conventions_%20Protocols/Convention_on_Mercenaries.pdf; and "International Convention against the Recruitment, Use, Financing and Training of Mercenaries," UN General Assembly, A/RES/44/34, 72nd Plenary Meeting, 4 December 1989, <http://www.un.org/documents/ga/res/44/a44r034.htm>.

⁴¹ Geoffrey Best quoted in Shearer, *Private Armies and Military Intervention*, 18.

⁴² Uwe Steinhoff, "What are Mercenaries?," in *Private Military and Security Companies: Ethics, Policies, and Civil-Military Relations*, ed. Andrew Alexander, Deane-Peter Baker and Marina Caparini (New York: Routledge, 2008), 19–29.

motive out of the equation, and as Deane-Peter Baker points out, also fails to describe what exactly is immoral about being a mercenary.⁴³ It is also vague (“military services” can be anything, and does not exclude support services such as transportation) and conditional, though not as much as the Article 47 definition. David Isenberg provides a more useful definition that allows the clarity necessary to confront the issues surrounding mercenaries. His definition is similar to Steinhoff’s, yet more concise. It describes mercenaries as “non-nationals hired to take direct part in armed conflicts.”⁴⁴ As Malcolm Patterson points out, however, a definition such as this could apply to “green card” holders who enlist in the U.S. military as a quick path to citizenship and serve in places like Iraq and Afghanistan.⁴⁵ These people are certainly not mercenaries.

In asking the question, “What the heck is a mercenary, anyway?,” Baker concludes that the term is “derisive” but searches for what is so ethically wrong with being a mercenary by comparing them to prostitutes, and the corresponding changes in societal norms associated with their existence. Due to the unavoidable moral ambiguity associated with the term, Baker chooses to discard the mercenary label and proceed with the term “contracted combatants.”⁴⁶ Likewise, to avoid ambiguity, the term “mercenary” will be discarded here.⁴⁷ Since the subject of this thesis is concerned with larger scale humanitarian intervention operations, the collective term PMC will be used instead.

Schreier and Caparini make no initial distinction between mercenaries and PMCs.⁴⁸ Other authors call this approach simplistic, and that the practice of applying the mercenary designation to any individual who works for a PMC obscures the legitimate utility these companies have.⁴⁹ In fact, it is difficult to classify people who work for

⁴³ Baker, *Just Warriors, Inc.*, 35.

⁴⁴ David Isenberg, quoted in Wing, *Private Military Companies and Military Operations*, 3.

⁴⁵ Patterson, *Privatising Peace*, 45–46.

⁴⁶ Baker, *Just Warriors, Inc.*, 31–47.

⁴⁷ An exception is in Chapter IV.

⁴⁸ Schreier and Caparini, “Privatising Security,” 2.

⁴⁹ David Shearer, “Outsourcing War,” *Foreign Policy* 112 (Fall 1998): 69.

PMCs as mercenaries.⁵⁰ Schreier and Caparini eventually acknowledge that mercenaries operate on an *ad hoc* basis while PMCs maintain corporate structures with permanent staff and have the ability to carry out complex operations.⁵¹ Singer classifies PMC operations into three generally accepted categories: military provider firms, military consultant firms, and military support firms.⁵² The PMCs in this thesis will be of the military provider type, or those at the “tip of the spear,” involved in the command and control of fighting units.⁵³ This type of PMC is the only type with a stand-alone capability that would be effective in the situations proposed here.

Finally, in the discussion of agency theory with respect to the contract between a PMC and its employer, the employer will always be referred to as the “principal,” or “principal agent,” and the PMC as the “agent,” or “agent of the principal.”

D. METHODOLOGY

To test the hypothesis put forth in this thesis, three cases were selected based on predetermined criteria. These cases were studied in factual and counterfactual form to determine what conditions are required for the ethical employment of a PMC to conduct humanitarian intervention. First, each case has been outlined based on analysis of facts and events as depicted in the literature. Then, congruence procedures were conducted on each case to determine the values of each independent variable (IV) relative to “normal” values, which for the purposes of this thesis will be adherence to the criteria presented in Chapter V.⁵⁴ These values will then be used to determine the value of the dependent variable (DV), which is the outcome in terms of moral permissibility or impermissibility.⁵⁵ Finally, where the DV is determined to be false, counterfactual details

⁵⁰ Shearer, *Private Armies and Military Intervention*, 18–19.

⁵¹ Schreier and Caparini, “Privatising Security,” 17.

⁵² Singer, *Corporate Warriors*, 91.

⁵³ Singer, *Corporate Warriors*, 93.

⁵⁴ This follows the congruence procedure type 1 outlined in Stephen Van Evera, *Guide to Methods for Students of Political Science* (Ithaca, NY: Cornell University Press, 1997), 58–61.

⁵⁵ A congruent variable will be determined to be true, while an incongruent variable will be referred to as false. If the value of any IV is determined to be false, then the DV will be false.

have been devised in each case so that the values of each IV become true, based on qualifying conditions artificially introduced for the purposes of hypothesis testing. Since these counterfactuals are created based on the hypothesis being tested, it is not necessary to repeat congruence procedures because all of the variables must be congruent by definition; the hypothetical conditions themselves are shown to represent conditions under which the employment of PMCs to conduct humanitarian intervention would be ethical.

1. Case Study Selection

Case studies were selected based on a modified list of criteria presented by Van Evera, who writes, “[c]ongruence procedure type 1 works best if we select cases with extreme (very high or very low) values on the [study variable (SV)].”⁵⁶ Because the IVs in this thesis are the SVs, cases were selected without regard to the outcome of the DV, ethical or otherwise. One case selected will be purely counterfactual, because a PMC was only considered and not employed in that case. Other criteria were established to ensure relevance to the research objective and to avoid selection bias.⁵⁷ Van Evera presents eleven criteria for case-selection, eight of which were used:

1. Data richness: there are many cases of interest that simply are not represented well in the literature.⁵⁸ Therefore, cases that have a significant amount of information available in the public record, including first-hand accounts and critical analyses, were selected.⁵⁹

⁵⁶ Van Evera, *Guide to Methods for Students of Political Science*, 59.

⁵⁷ Alexander L. George and Andrew Bennett, *Case Studies and Theory Development in the Social Sciences* (Cambridge, MA: MIT Press, 2005), 22–25, 83.

⁵⁸ Cases such as the Serbian mercenary unit in Zaire (James C. McKinley, Jr., “Serb Who Went to Defend Zaire Spread Death and Horror Instead,” *New York Times*, 19 March 1997, <http://www.nytimes.com/1997/03/19/world/serb-who-went-to-defend-zaire-spread-death-and-horror-instead.html>), Stabilco and Omega Support Ltd., in Angola (mentioned in Singer, *Corporate Warriors*, 224), and Russian mercenaries in Sudan (James Dunnigan, “Russian Mercenaries Over Africa,” *Strategy Page*, 21 June 2008, <http://www.strategypage.com/dls/articles/200862112816.asp>) are all relevant cases with undoubtedly extreme values on the SVs, but so little information is available on them, an attempt to include them as case studies would be impractical.

⁵⁹ George and Bennett argue that cases should not be selected according to availability of data, but for the purposes of this thesis, such a level of detail is required to assess adherence to moral norms, data richness must remain a criterion (George and Bennett, *Case Studies and Theory Development in the Social Sciences*, 83).

2. Extreme values on the values of the IVs: although counterfactuals will serve to match the values of the IVs, it is desirable to have a starting point that is very different in each case.
3. Large within-case variance on the values of the IVs.
4. Predictions made by competing theories disagree with the hypothesized outcome: although this applies to any case of PMC employment, the criterion is still used here.
5. Similarity to current policy issues.
6. Similarity of case background conditions: all are concerned with a rebellious population.
7. Suitability for comparison with other cases.
8. Fundamental importance.⁶⁰

2. Congruence Procedure

“Type 1” congruence procedures are used in each case to observe the values of the IVs and compare them to the values of typical IVs that would be found in the world.⁶¹ In this study, it is not necessary to predict the result, because it is already known based on the historical outcome. A comparison to typical values, or conditions that would be expected in accordance with the theory presented, is still necessary to determine whether or not those conditions are possible. To aid in the formulation of the theory presented here, it is then necessary to use counterfactuals.

3. Counterfactuals

Unfortunately, analysis of each case study reveals very different values on the IVs; two cases present situations where intervention is certainly permissible, one case does not. The reasons the cases are permissible or impermissible are varied; each is associated with a different case of adherence or non-adherence to the theory of ethically justified private intervention presented in Chapter V. To test the hypothesis that private intervention can be permissible under these conditions, counterfactuals based on the cases

⁶⁰ Van Evera, *Guide to Methods for Students of Political Science*, 77–88.

⁶¹ Van Evera, *Guide to Methods for Students of Political Science*, 58.

selected for this thesis must be developed where variables are changed by changing conditions from what actually happened to what could have feasibly happened.⁶² If the value of an IV revealed in the case complies with the theory's criteria, then counterfactual details will not be used. It is acknowledged that this technique is far from ideal, but it is necessary since there are few examples in the modern historical record that would apply here; the technique has also been shown to be useful in previous work.⁶³ Acknowledging the difficulty of creating convincing counterfactuals, five of six criteria outlined by Alexander George and Andrew Bennett will be followed to ensure the effectiveness of the technique.⁶⁴

First, the counterfactuals will be built upon the cases that were selected using the criteria discussed above. Each case study will already have identified critical variables which caused the case's historical outcome and its resultant adherence or non-adherence to the theory; those variables will be changed to reflect a different outcome, implying causation to that variable to infer conditions under which the case would have been permissible, if necessary. Second, the conditions to be changed will be feasible resulting in a feasible alternative outcome. Since the outcome to be sought after is one of permissibility within an ethical framework, the variable change will not mean the difference between victory or defeat in any case, and will largely deal with changes that represent a significantly different moral status, but with only a corresponding subtle change at the tactical level. Third, the independent variables to be altered are all autonomous. When any one variable proves false it can render the dependent variable false as well. For example, in the event of non-adherence to the principles of internal *jus in bello*, the case is rendered morally impermissible within the operating framework. Interconnected causation is possible however, so when multiple independent variables are determined to affect the dependent variable, they will all be changed within a reasonable

⁶² Van Evera, *Guide to Methods for Students of Political Science*, 25–26.

⁶³ James D. Fearon, "Counterfactuals and Hypothesis Testing in Political Science," *World Politics* 43, no. 2 (January 1991): 170.

⁶⁴ Two of the criteria presented by George and Bennett do not apply; the first criteria implies that all causal variables should be changed, which is not necessary in this analysis; the second refers to causal substitution, which suggests that a variable different from an identified causal variable may also cause the same outcome. All causal variables identified as false will be changed. The possibility of interconnected variables is addressed in the third criteria.

level of complexity. Finally, for simplicity, the decisive points in each case will be restricted to seven criteria. These decisive points correspond to the criteria of permissible private intervention presented in Chapter V, and are causal by definition, in that each may independently determine the outcome of the case.⁶⁵

It should be noted that the counterfactual analyses in this thesis are not meant to test the theory. Their purpose is to test the hypothesis that permissible private intervention is possible. As Van Evera writes, "...counterfactual statements are not data and cannot replace empirical data in theory-testing."⁶⁶

E. ORGANIZATION OF THE THESIS

The thesis proceeds in seven chapters, beginning with this introduction. In Chapter II, the ethics of humanitarian intervention will be introduced to establish the origins of the duty to protect innocent civilians and to discuss the question "who should intervene?" Chapter III is an overview of the soldier's duty to his country and the state's duty to its citizens, and how those duties conflict with the more general duty of humanitarian intervention. Chapter IV introduces the ethics of PMC operations and tackles the stigma surrounding them; it also serves to address the objections to their employment up front. PMCs are uniquely suited to humanitarian intervention, in spite of objections otherwise, and that argument is presented there. Chapter V outlines the theoretical framework to be used in this thesis, beginning with an overview of Just War Theory. The traditional criteria, and some modern ones, will be considered and the resulting rationale behind the criteria chosen for the theory presented in this thesis. To further aid the formulation of the theory, the chosen case studies will be presented Chapter VI. They are unique cases and present a valuable opportunity to consider the ethics of humanitarian intervention. In one case, a thought experiment on the implications of private funding of humanitarian intervention by a wealthy individual will be considered. This highly unlikely scenario nonetheless presents a valuable lesson beyond the continuation of crimes against humanity; it is an experiment in rebellion against the established order itself by an unlikely rebel: the extremely wealthy and influential

⁶⁵ George and Bennett, *Case Studies and Theory Development in the Social Sciences*, 168–169, 230–232.

⁶⁶ Van Evera, *Guide to Methods for Students of Political Science*, 48.

individual. The final chapter concludes with a revised version of the theory of ethically justified private intervention, and commentary on the future of PMCs in the world order.

II. HUMANITARIAN INTERVENTION

Humanity has visited horror upon itself since the dawn of time. Crimes against humanity are probably no more frequent now than they were a thousand years ago, except that today, news of mass killings reaches our televisions or computer screens within hours. This painful awareness brings questions of responsibility and a relatively new debate on whether or not there is a duty to take action to prevent the further suffering of other people.⁶⁷ A nonintervention principle is firmly rooted in international law, however, and specifies that no state may force its authority over another state within the borders of that state's territory without its consent.⁶⁸ An intervention without the permission of the target state is an act of aggression.⁶⁹ Yet, under certain conditions, such as crimes against humanity, most scholars agree that armed humanitarian intervention is morally permissible, as an exception to the nonintervention principle. An alternate view is that in the event of crimes against humanity, the nonintervention principle has already been violated and that humanitarian intervention actually upholds the nonintervention norm.⁷⁰ Some realists believe that if an intervention is not in the state's national interests, then it should not be done at the risk of blood or treasure; other realists believe that people in dire circumstances should be helped if the costs are not too great.⁷¹ An increasing few subscribe to the legalist paradigm and its adherence to the notion of inviolable state sovereignty. In the post-Cold War world, the rights of individuals have come to the forefront and humanitarian intervention is generally viewed as permissible in

⁶⁷ Michael Walzer, "The Argument about Humanitarian Intervention," *Dissent* 49, no. 1 (Winter 2002), 29.

⁶⁸ Nardin, "Introduction," 1.

⁶⁹ Nardin, "Introduction," 11.

⁷⁰ Mervyn Frost, "The Ethics of Humanitarian Intervention: Protecting Civilians to Make Democratic Citizenship Possible," in *Ethics and Foreign Policy* ed. Karen E. Smith and Margot Light (West Nyack, NY, Cambridge University Press, 2001), 51.

⁷¹ Nicholas J. Wheeler, "Humanitarian Intervention after September 11, 2001," in *Just Intervention*, ed. Anthony F. Lang, Jr. (Washington, DC: Georgetown University Press, 2003), 194.

cases of aggression by a state against its own citizens, in the form of genocide and other crimes against humanity.⁷² What is not readily apparent, however, is the moral obligation to intervene.

Pattison supplies a satisfying answer to what humanitarian intervention is, beginning with four criteria. His first criterion specifies that the intervention is military in nature, and as a rule, armed. The second criterion requires that grievous suffering or loss of life is actively in progress or impending. The third requires that intervention be carried out by an external agent, and the fourth requires at least some humanitarian intention. In summary, Pattison's definition to be adopted here is "forcible military action by an external agent in the relevant political community with the predominant purpose of preventing, reducing, or halting an ongoing or impending grievous suffering or loss of life."⁷³ The definition cannot provide, however, when it is appropriate to intervene, whether or not it is supererogatory or obligatory, and who exactly, besides an external agent, is supposed to carry it out.

In this chapter, conditions that warrant humanitarian intervention will be considered through an examination of the moral and legal philosophy of intervention. Then, the traditional view of a right to intervene is demonstrated to be a duty, and this duty to intervene will be discussed within the framework of the Kantian categorical imperative, using an interpretation that frames intervention as an imperfect or perfect duty, depending on whether the duty is assigned or not. An argument will be presented that, in the event of crimes against humanity, that intervention continues to be an imperfect duty, but it need not remain so. Finally, the important question of who should intervene will be considered, in terms of both the principal's special relationship to the victims, and the principal's unique capability to carry out the intervention, in this case with the available services of a PMC acting as agent.

⁷² Lyn Graybill, " 'Responsible.... by Omission': The United States and Genocide in Rwanda," *Seton Hall Journal of Diplomacy and International Relations* 3 no. 1 (2002): 86.

⁷³ Pattison, *Humanitarian Intervention and the Responsibility to Protect*, 24–28.

A. WHEN TO INTERVENE

Numerous authors have sought to define the conditions under which military intervention ought to be carried out. Michael Walzer considers intervention in cases of secession, civil war, and humanitarian crises, and concludes simply that intervention is permissible when events occur “that shock the moral conscience of mankind.”⁷⁴ Such interventions are humanitarian in nature, but may also have limited political objectives. The same author describes two historical examples of justified military intervention and concedes that although mixed motives were likely present, the horrific nature of the atrocities and crimes against humanity that occurred in these cases is undeniable, and so the interventions were justified. He rejects the notion that a mission that is only partially humanitarian is not permissible. Nicholas Wheeler agrees, and notes that an intervention motivated by purely ethical values would require such a high moral standard, that it would be impossible.⁷⁵ Walzer objects further to the moral defense of waiting for a higher authority, such as the UN, to take action.⁷⁶

Humanitarian intervention is undertaken not in conquest but with a just cause, and with the aim to aid the beneficiaries of the intervention with the ability to exercise their right to self-determination. Granted, this statement is problematic. Walzer acknowledges the problems with enabling self-determination on behalf of a people by discussing John Stuart Mill’s argument on the subject. He relates the Millian view as one of self-help, and that liberty must originate from within a society. Liberty from without, or facilitated through foreign intervention, is a failed effort by definition because it violates the essence of self-determination.⁷⁷ This view does not account for the moral dilemma of crimes against humanity allowed or perpetrated by a state, however, and while it is important to

⁷⁴ Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, 4th ed. (New York: Basic Books, 2006), 107.

⁷⁵ Wheeler, “Humanitarian Intervention after September 11, 2001,” 195.

⁷⁶ Walzer, *Just and Unjust Wars*, 86–108; the two examples are the U.S. invasion of Cuba in 1898 and the Indian invasion of Pakistan in 1971. The former crisis predates the UN; the latter crisis was brought before the UNSC with no result.

⁷⁷ Walzer, *Just and Unjust Wars*, 87–88; see also Terry Nardin, “The Moral Basis for Humanitarian Intervention,” in *Just Intervention*, ed. Anthony F. Lang, Jr. (Washington, DC: Georgetown University Press, 2003), 17.

note the Millian view, this thesis supposes that to facilitate the right to self-determination on behalf of other people is permissible and that the defense of human rights always supersedes sovereignty.⁷⁸ Therefore, an operating assumption of this thesis is that the notion that sovereignty is inviolable is outdated, and no state can do as it pleases with its citizens without the threat of intervention.⁷⁹

Nardin takes Walzer's shock of moral conscience further and lists three conditions under which humanitarian intervention ought to be conducted: 1) when a sufficiently grave threat exists that warrants the violation of a state's sovereign rights, 2) when authorized by a recognized international authority (if available, therefore optional), and 3) with the highest degree of effectiveness.⁸⁰ These conditions are consistent with the *jus ad bellum* principles of ethically justified private intervention to be considered here: just cause, right authority, and right intention.⁸¹

Brian Orend follows Walzer and considers a critical legal requirement of an intervener, which is United Nations Security Council (UNSC) authorization. He points out that in general, UNSC authorization is "absolutely necessary."⁸² While this may be true in the anarchic world of international law, it not only lies in the realm of the unenforceable, it also poses a moral dilemma in the event of a humanitarian crisis absent UNSC authorization to intervene.⁸³ Pattison considers the dilemma and concludes by rejecting UNSC authorization as an indicator of moral standing. He reasons that UNSC authorization may be slightly preferable in the interests of international order, but that

⁷⁸ ICISS, *The Responsibility to Protect*.

⁷⁹ Tan, "The Duty to Protect," 90.

⁸⁰ Terry Nardin, "The Moral Basis for Humanitarian Intervention," 23.

⁸¹ Nardin's third criteria may be taken to relate more closely to the traditional *jus ad bellum* criteria of reasonable expectation of success. However, here it is related to right intention, as the expectation of success should be interpreted to be part of the final intent.

⁸² Orend, *The Morality of War*, 90.

⁸³ This is in consideration of the numerous examples of the UNSC's failure to act in the face of genocide and/or crimes against humanity, including Pakistan in 1971 (see previous note), due to internal conflicts among permanent members or other reasons (James Pattison, "Humanitarian Intervention and International Law: The Moral Importance of an Intervener's Legal Status," *Critical Review of International Social and Political Philosophy* 10, no. 3 (2007): 315).

illegal humanitarian intervention is preferable to no intervention at all.⁸⁴ Nardin agrees by noting that, “to insist on such authorization is to presume a degree of justice and effectiveness at the supranational level that the world has not yet achieved.”⁸⁵ Beyond this point, that the legal status of an intervener is not necessarily morally relevant, the debate concerning the legal implications of humanitarian intervention exceeds the scope of this thesis.

It also must be made clear that military intervention is always the last resort, and that no other version of that is assumed or implied in this thesis. Intervention violates the political and territorial integrity of a sovereign nation, and must be justified. Walzer describes the burden of proof as one that rests on the shoulders of the intervener, especially in the case of an intervention that is likely to result in violence.⁸⁶ Orend argues that there must be consideration to the severity of the crisis, that “‘run-of-the-mill’ government insensitivity” would not justify intervention, and that those kinds of cases that can be solved through political or social activism related to the Millian self-help method of self-determination.⁸⁷ Humanitarian intervention does not violate humanity’s right to self-determination; it seeks to uphold it. As Mervyn Frost argues, like the right to self-determination, the nonintervention principle is to be upheld by the intervening power. When crimes against humanity are at issue, those rights and principles have already been violated and intervention is permissible.⁸⁸

The hallmark document in humanitarian intervention is the report of the International Commission on Intervention and State Sovereignty (ICISS) entitled *The Responsibility to Protect* (R2P). This report is important because it begins a shift in

⁸⁴ Pattison, “Humanitarian Intervention and International Law,” 301–319; see also Baker, *Just Warriors, Inc.*, 150–152.

⁸⁵ Nardin, “The Moral Basis for Humanitarian Intervention,” 22–23.

⁸⁶ Walzer, *Just and Unjust Wars*, 86.

⁸⁷ Orend, *The Morality of War*, 91–92.

⁸⁸ Frost, “The Ethics of Humanitarian Intervention,” 54

thinking away from intervention as a right, to intervention as a duty.⁸⁹ It invokes Walzer's succinct phrase by describing when to conduct humanitarian intervention as "exceptional circumstances...cases of violence which so genuinely 'shock the conscience of mankind.'"⁹⁰ The report also provides an ethical guideline for making the decision to intervene that mirrors six commonly accepted criteria of *jus ad bellum*. Each criterion will be considered in detail in Chapter V, but three will be repeated here: just cause, right authority, and right intention.⁹¹

B. THE DUTY TO INTERVENE

R2P focuses on state sovereignty and the nonintervention principle, however, and assumes that if intervention is permissible, then it must also be obligatory, which generates the "responsibility to protect."⁹² Tan argues that this assumption is not without merit, except that there is no specific entity identified as the owner of the task.⁹³ Nearly all of the previously mentioned scholars consider humanitarian intervention an "imperfect" duty, as distinguished in one interpretation of Kant as a moral obligation that is simply praiseworthy if fulfilled, yet holds no requirement for fulfillment by all. In other words, the imperfect duty to contribute to the happiness of other people is non-binding in the framework of Kant's end-in-itself conception of humanity, because it fails the test of self-contradiction. Walzer laments this by writing, "the massacres go on, and every country that is able to stop them decides that it has more urgent tasks."⁹⁴

Wheeler, like Walzer, characterizes humanitarian intervention as "an act of great kindness," where a state places the lives of its citizens at risk for the sake of

⁸⁹ James Pattison, "Whose Responsibility to Protect? The Duties of Humanitarian Intervention," *Journal of Military Ethics* 7, no. 4 (2008): 263.

⁹⁰ ICISS report, "The Responsibility to Protect," 31.

⁹¹ ICISS report, "The Responsibility to Protect," xii, 31–32.

⁹² For more detail on the argument supplied by R2P, see the ICISS report, "The Responsibility to Protect."

⁹³ Tan, "The Duty to Protect," 88–94.

⁹⁴ Quoted in Nardin, "The Moral Basis for Humanitarian Intervention," 27.

noncitizens.⁹⁵ In fact, most theorists consider humanitarian intervention to be an imperfect duty.⁹⁶ Carla Bagnoli takes a different position. She points out that many arguments to justify humanitarian intervention wrongly seek to establish whether or not such an action is permissible, when in fact the intervention may be morally obligatory. When violations of human rights occur, these arguments characterize the duty to protect as charity, which implies that neutrality is also permissible and not morally objectionable.⁹⁷ Bagnoli's argument follows Kant's second formulation of the categorical imperative, whereby humanity should be treated "always at the same time as an end and never simply as a means."⁹⁸ Bagnoli identifies two duties whereby respect for humanity is achieved; to protect the victims and to punish the offenders. She argues that these duties are not of charity but of justice, and therefore both are perfect duties. Neutrality is not an option; in fact, in the event of human rights violations, neutrality is a moral offense and cause for blame.⁹⁹ Nearly one million dead following the Rwanda genocide attest to the consequences of neutrality, as do the regret and feelings of responsibility expressed by Kofi Annan many years later.¹⁰⁰

John Lango takes a similar position. His argument is that an intervention must first be determined to be permissible; once it has been determined to be permissible, a presumption that it is also obligatory can be made as well. The presumed obligation can be overridden, however. The burden of proof that the obligation should be overridden then falls on the intervener; if the intervener fails to prove that the obligation should be

⁹⁵ Wheeler, "Humanitarian Intervention after September 11, 2001," 194.

⁹⁶ For examples, see Nardin, "Introduction," 16; Orend, *Morality of War*, 95; or Tan, "The Duty to Protect," 103–104.

⁹⁷ Carla Bagnoli, "Humanitarian Intervention as a Perfect Duty," in *Humanitarian Intervention*, NOMOS XLVIII, ed. Terry Nardin and Melissa S. Williams (New York: New York University Press, 2006), 118–119.

⁹⁸ Immanuel Kant, *Grounding for the Metaphysics of Morals; with On a Supposed Right to Lie Because of Philanthropic Concerns*, 3rd edition, trans. James W. Ellington (Indianapolis, IN: Hackett Publishing Company, 1993), 36 (429).

⁹⁹ Bagnoli, "Humanitarian Intervention as a Perfect Duty," 118–119.

¹⁰⁰ Nat Hentoff, "Kofi Annan's Confession," *The Village Voice*, 24 May 2006, 28.

overridden by proving that the moral costs of the intervention are excessive, then there actually is an obligation.¹⁰¹

Unfortunately, the position that humanitarian intervention is a perfect duty does not hold up because it is largely an unassigned duty; that is, exactly *who* bears this duty is unclear, since it is general and standing. Furthermore, the position taken by Lango, that if an intervention is permissible then it is also obligatory unless proven otherwise, is difficult to justify for the same reason. If there is no principal identified, then there is no obligation to override. Therefore, the duty to intervene is best described as an unassigned duty that becomes perfect when assigned to a principal agent. Tan asserts that the duty need not remain imperfect; that it can be assigned, if the duty to protect is institutionalized.¹⁰² Therefore, the fact that a duty exists is not usually the problem; how the duty is assigned becomes the real issue.

C. WHO SHOULD INTERVENE

Several scholars have addressed the question of who should intervene. Pattison describes the duty to intervene in a humanitarian crisis as a generally unassigned duty that should be accepted by a principal with the most legitimacy. If a number of principals with a degree of legitimacy can claim the right to intervene, then the principal with the highest degree of legitimacy has the duty to intervene.¹⁰³ Patterson is more specific, and singles out the UN as the world's primary humanitarian force, but also points out ten other regional organizations that could take on the role.¹⁰⁴ Tan describes the problem of assigning the duty as the "agency condition," and specifies two circumstances in which this condition is met: when the principal maintains a "special relationship" with the

¹⁰¹ John W. Lango, "Is Armed Humanitarian Intervention to Stop Mass Killing Morally Obligatory?," *Public Affairs Quarterly* 15, no. 3 (July 2001): 181–183.

¹⁰² Tan, "The Duty to Protect," 102.

¹⁰³ Pattison, *Humanitarian Intervention and the Responsibility to Protect*, 12, 211.

¹⁰⁴ These regional organizations named by Patterson are the Commonwealth of Independent States (CIS), Economic and Monetary Community of Central African States (CEMAC), Economic Community of West African States (ECOWAS), the European Union (EU), Inter-Governmental Authority on Development (IGAD), the North Atlantic Treaty Organization (NATO), Organization for Security and Cooperation in Europe (OSCE), the African Union (AU), Organization of American States (OAS), and the Southern African Development Community (SADC) (Patterson, *Privatising Peace*, 1, 22).

victims, or when the principal possesses such extraordinary capability, he becomes the obvious choice.¹⁰⁵ In this section, the issues of legitimacy, the expectations of international and regional organizations, and the agency condition will be explored to illustrate the complexity and ambiguity of who should intervene.

Pattison sketches the notion of legitimacy through the Moderate Instrumentalist Approach, in which the intervener's effectiveness is of prime importance. This approach asserts that a legitimate intervener is one that can achieve a good outcome, such as stopping crimes against humanity. Therefore, the principal agent that can most effectively achieve its goal is also the most legitimate. This concept is important in an analysis of privatized intervention, so it will be described here. The approach is largely consequentialist, but has some non-consequentialist criteria as well. Pattison describes three forms of effectiveness that make up the first three of seven qualities contained in his approach. The first is "local external effectiveness," which is the intervener's ability to end the crisis and successfully promote human rights in the area of the intervention. The second is "global external effectiveness," which is the effect of the intervener's actions in the promotion of global human rights, outside of the area of intervention. Pattison's final form of effectiveness is the "internal effectiveness" of the intervener, which is determined by the intervention's effect on the intervener's own citizens.¹⁰⁶

Pattison suggests that these qualities are necessary, but perhaps not sufficient for an intervener to be legitimate. Some non-consequentialist qualities are required, beginning with adherence to the traditional criteria of *jus in bello*: proportionality and discrimination, which Pattison refers to as "external *jus in bello*." Next is "internal *jus in bello*," or a form of the "no means *mala in se*" principle directed at the intervener's own troops, including a prohibition on the use of child soldiers or methods that put the intervener's own troops at unnecessary risk. Two other factors specified by Pattison are worth noting: "internal representativeness," and "local external representativeness." The former is concerned with the requirement of a positive consensus of opinion within the

¹⁰⁵ Tan, "The Duty to Protect," 86.

¹⁰⁶ Pattison, *Humanitarian Intervention and the Responsibility to Protect*, 182.

organization conducting the intervention, and the latter stipulates agreement with the political machine within the state subject to the intervention.¹⁰⁷ These last two factors are an important part of determining the legitimacy of an intervener, but in the event that a humanitarian intervention is being considered, they will be an assumed positive.

Pattison's Moderate Instrumentalist Approach is a compelling framework for ethical intervention, and when used in a scaled approach, provides a measure of legitimacy that is perhaps sufficient for a principal agent to move forward with an intervention. There are other factors mentioned by Pattison: legal authorization; the degree of humanitarian intention of the intervener, including whether the intervener's motives are exclusively humanitarian, mixed, or self-interested; or "global external representativeness," whether or not the intervener's goals reflect world opinion. While these factors play a role in the likelihood of an intervener's legitimacy, they are not necessary.¹⁰⁸ In summary, an intervener determined to be adequately effective should intervene, as determined using the factors of Pattison's Moderate Instrumentalist Approach. The factors to be considered here are:

- local external effectiveness
- global external effectiveness
- internal effectiveness
- external *jus in bello*
- internal *jus in bello*

Pattison also identifies some legitimate potential principal agents to conduct humanitarian intervention; the most obvious of which is international and regional organizations, but includes PMCs.

International organizations are generally created in the interests of collective security under four conditions: two objective criteria, concerning the existence of politically divided autonomous states and the existence of communication or trade

¹⁰⁷ Pattison, *Humanitarian Intervention and the Responsibility to Protect*, 182–184.

¹⁰⁸ Pattison, *Humanitarian Intervention and the Responsibility to Protect*, 185; for a much more detailed account of Pattison's approach, see Chapters 3, 4, and 5 of his book.

between those states to create interdependence; and two subjective criteria, whereby states recognize the problems created by interdependence and as a result, identify a need to create a third-party organization to deal with those problems.¹⁰⁹ The collective security principle under which they are founded is the characteristic of the organizations to be considered here. The UN, for example, whose founding principles included the idea that elective war is never permissible, made provisions in its charter for its members to provide military forces in the event of crisis or unauthorized military action.¹¹⁰ However, the efforts of the UN, and those of most international organizations, to conduct humanitarian interventions have often been criticized as failures. The commonly accepted reason for failure is the *ad hoc* nature of UN operations, dependent on the willingness of member states to provide forces when the UN needs them. Kofi Annan calls it “the built-in delay” in which the UN operates.¹¹¹ Dore Gold, a former Israeli ambassador to the UN, has delivered strong criticism of the UN efficacy.¹¹² Pattison points out three specific failures of UN peacekeeping: United Nations Protection Force (UNPROFOR) in Bosnia, during which 230,000 people died; UNAMIR in Rwanda, which was actually drawn down while approximately 800,000 people were slaughtered; and United Nations Assistance Mission for Sierra Leone (UNAMSIL), which had to be bailed out by the British as the RUF committed atrocity after atrocity under their noses. The same author goes on to discuss the lengthy process of *ad hoc* troop deployment used by the UN, attributing the laboriousness and unreliability of the process to the resultant UN mission failures, notwithstanding the low quality of the troops provided by member states. Pattison uses the recent example of the United Nations Assistance Mission for Darfur

¹⁰⁹ Claude sums up these criteria as “division,” “interdependence,” “anxiety,” and “dissatisfaction” (Inis L. Claude, *Swords into Plowshares: The Problems and Progress of International Organization*, 4th Edition (New York: Random House, 1971), 21).

¹¹⁰ “Charter of the United Nations and Statute of the International Court of Justice,” 1945, Chapter VII, Article 43, 9, <http://www.un.org/en/documents/charter/chapter7.shtml>.

¹¹¹ Hentoff, “Kofi Annan’s Confession,” 28.

¹¹² Gold, *Tower of Babble*, 135–174; Chapter 6, “Impartial to Genocide,” criticizes the UN’s performance with respect to the Rwanda crisis in the 1990s; Chapter 7, “Scenes from Hell,” holds the UN responsible for the massacre of 7,500 Muslims at Srebrenica in 1995.

(UNAMID) to illustrate the enduring nature of the problem.¹¹³ He acknowledges that there have been some improvements in UN peacekeeping, however. In fact, it should be noted that although the previously mentioned UN missions were a failure overall, they did save some lives and so were at least partially effective.¹¹⁴ The difficulties experienced by UNAMID in 2009 may have been due to overreaching; as of 31 May 2012, there are 17 UN peacekeeping missions being carried out by over 121,000 personnel.¹¹⁵

Patterson also outlines the inherent difficulties of the UN's method of using *ad hoc* military forces but presents several alternatives, including a permanent rotating force of member states' forces, standby forces, or a "UN Legion," a permanent standing force loyal to the UN alone. The rotating force is limited in that its nation's interests would still retain primacy. The "UN Legion," will not likely be suddenly accepted by member states, not after over 70 years of the idea's proposal. Standby forces have not been successful in the past, as evidenced by the failure of UNSAS to react in response to the Rwanda crisis.¹¹⁶ The standby force idea is still alive, however. In 1996, the Multinational Stand-By High Readiness Brigade for United Nations Operations (SHIRBRIG) was formed by seven countries, and seeks to reinforce UNSAS "through effective and continuous pre-deployment planning."¹¹⁷ SHIRBRIG maintained a permanent headquarters in Denmark and took part in six peacekeeping operations, but was disbanded in 2009.¹¹⁸ Several NGOs have called for the creation of a United Nations Emergency Peace Service (UNEPS), a "standing, international peacekeeping service," to "fill the gap between the

¹¹³ Pattison, *Humanitarian Intervention and the Responsibility to Protect*, 203.

¹¹⁴ Pattison, *Humanitarian Intervention and the Responsibility to Protect*, 204–205; Michael O'Hanlon, *Saving Lives with Force: Military Criteria for Humanitarian Intervention* (Washington, DC: Brookings Institution Press, 1997), 1.

¹¹⁵ "Background Note: United Nations Peacekeeping," *United Nations Peacekeeping*, 31 May 2012, <http://www.un.org/en/peacekeeping/documents/backgroundnote.pdf>; this is an update to figures provided by Pattison.

¹¹⁶ Patterson, *Privatising Peace*, 15–21.

¹¹⁷ "SHIRBRIG: Ready to deploy," *UN.org*, <http://www.un.org/en/peacekeeping/publications/yir/2006/shirbrig.htm>.

¹¹⁸ "SHIRBRIG and the future of UN Rapid Reaction Peacekeeping Capacities," *Global Governance Institute*, http://www.globalgovernance.eu/index.php/research-and-advice-clusters/shirbrig_future.html.

Security Council's authorization of a peace operation and the actual deployment of a conventional peacekeeping mission."¹¹⁹ Several NGOs have versions of the proposal on their websites,¹²⁰ but nearly ten years after the initial proposal written by Robert Johansen, there is still no evidence of implementation.

Moving on with the assumption that a UN standing force is not a viable option, Pattison identifies five organizations with the potential to accept the duty to intervene, which he presents in their proposed order of legitimacy: the North Atlantic Treaty Organization (NATO), states or coalitions of the willing, the UN, regional organizations such as the African Union (AU) or European Union (EU), and PMCs. The order could change depending on the circumstances, and considering local effectiveness based on the cultural makeup of the force and the nature of the threat.¹²¹ The first four would intuitively have the greatest legitimacy; however, each has carried out humanitarian interventions with variable effectiveness.¹²² PMCs should not be on the list without further qualification, as PMCs do not do anything they are not paid to do. The correct way to identify an intervener in this context would be perhaps "Principal Agent of a PMC." This clarifies the intervener more correctly as the sponsor of the intervention and the PMC as the tool. The PMC derives its mandate from the principal agent, and the two together derive the legitimacy required for the intervention. If effectiveness is a true

¹¹⁹ "United Nations Emergency Peace Service: One Step towards Effective Genocide Prevention," *Citizens for Global Solutions*, http://globalsolutions.org/files/public/documents/UNEPS_CGS_One-Step-Towards-Effective-Genocide-Prevention.pdf.

¹²⁰ Robert C. Johansen, "A United Nations Emergency Peace Service to Prevent Genocide and Crimes against Humanity," *Waging Peace*, from the Symposium on "Genocide and Crimes Against Humanity: The Challenge of Prevention and Enforcement, 4–6 December 2003, https://www.wagingpeace.org/articles/2005/03/00_uneps.pdf; see also "United Nations Emergency Peace Service," *World Federalist Movement*, <http://www.wfm-igp.org/site/wfm/united%2Bnations%2Bemergency%2Bpeace%2Bservice>; "A United Nations Emergency Peace Service to Prevent Genocide and Crimes Against Humanity," *Liu Institute for Global Issues*, 27 March 2009, <http://www.ligi.ubc.ca/?p2=modules/liu/events/view.jsp&id=788>; Larry Kazdan, "UN Emergency Peace Service Could Save Countless Lives," *Examiner.org*, 7 December 2009, <http://www.examiner.com/article/un-emergency-peace-service-could-save-countless-lives>.

¹²¹ Pattison, *Humanitarian Intervention and the Responsibility to Protect*, 199–200.

¹²² For a comprehensive analysis of the effectiveness of each potential intervener, see Pattison, *Humanitarian Intervention and the Responsibility to Protect*, 200–207.

measure of legitimacy, then the right principal agent with the right PMC has the potential to be at least as legitimate as any other entity on this list.

Another measure of legitimacy is the principal agent that maintains a “special relationship” with the victims, for example, ethnic ties, an economic partnership, or a former imperial power; or when the principal possesses such extraordinary capability that he becomes the obvious choice. The unique obligation of these principal agents is a factor of their legitimacy. Tan advocates these antecedents as methods that could be used to solve the “agency condition,” by institutionalizing shared responsibilities in the international community, and in effect create obligations on behalf of states which would have previously held only supererogatory duties.¹²³ The creation of new institutions is far from an ideal solution, however. The creation of the UN in 1945 was meant to solve this problem, and history has shown that new, different institutions have been no better. The creation of a new institution to assign the duty of humanitarian intervention is not likely to be more effective than the *status quo*.

The question of who should intervene remains unanswered. Three determinants have been presented here: from the most effective principal agent, to existing organizations, to the designation of a new institution to assign the duty of intervention; out of these, the most convincing is that the duty should go to the most effective principal agent. Who that would be is the obvious next question, and the answer is open-ended. The UN is an obvious choice, but its processes have proven to be unreliable. Kofi Annan himself has suggested, “[w]hen the UN is too slow, go past us.”¹²⁴ The world’s superpower may be an answer, but its armed forces may be stretched thin; a neighboring country with ethnic ties could also take the job, but maybe their armed forces are too weak. There are other influential powers in the world as well. Transnational Corporations (TNCs) may have an interest in the stability of a region and may find it in their best interest to outsource an intervention in a failed state. There are extremely wealthy individuals who may find peace in the brotherhood of humanity, or simply find it in the

¹²³ Tan, “The Duty to Protect,” 96.

¹²⁴ Hentoff, “Kofi Annan’s Confession,” 28.

interests of their self-image to finance an intervention. In the chapters that follow, the possibility that PMCs act as the agent of intervention will be considered, in the employment of state or non-state principals, to determine the moral viability of such a solution.

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III. ROLE OBLIGATIONS: THE STATE AND THE SOLDIER

The usual instruments of humanitarian intervention are the regular armed forces of a state. As a result, discussions regarding “who should intervene” are usually directed at states, because in the modern day, states generally maintain a monopoly on the use of violence.¹²⁵ However, the question should actually be phrased, “whose soldiers should be sent to intervene and potentially be killed in the process?” Since humanitarian intervention is conducted by force, by definition, it should be expected that at least some soldiers will likely die. This expectation necessitates some follow-on questions. If collective security for citizens is part of a state’s reason for being, does that extend to non-citizens? When a person enlists in the armed forces, he probably accepts the possibility of being deployed to dangerous places, but does he expect to be deployed to protect foreigners? The answer to both of these questions is “probably not.” To explore this issue further, the role obligations that states have in the world must be examined versus the obligations soldiers have to the state. Even when gross crimes such as genocide happen and an intervention becomes morally necessary, states are reluctant to risk the lives of their own soldiers. It constitutes a constant moral tension that is at the root of the international community’s failure to act in most cases. However, for states to fulfill the duty to prevent crimes against humanity, and at the same time protect its soldiers in the interests of national defense, a third party could be employed. Considering this, the case will be made that the use of PMCs is morally preferable to the employment of a state’s armed forces.

As previously discussed in Chapter II, the existence of a duty, of some kind, to protect helpless human beings has been well established.¹²⁶ If states incur obligations to protect non-citizens and to prevent crimes against humanity, it follows that to fail to do this is a moral offense. In early 1992, the international community made an effort to fulfill

¹²⁵ As outlined in the theory of the Social Contract advanced by Thomas Hobbes and Jean-Jacques Rousseau (Elke Krahmann, *States, Citizens and the Privatization of Security* (New York: Cambridge University Press, 2010), 21–22).

¹²⁶ See also ICISS, *The Responsibility to Protect*.

its duty after becoming outraged by the horrific famine being playing out in Somalia. Over 500,000 Somalis were estimated to have died of starvation, while a number of warlords and their associated armed groups profited from the theft of relief supplies.¹²⁷ After a weak effort by the UN, the U.S. administration offered to lead an armed effort to ensure the delivery of humanitarian aid, if it was authorized by the UN Security Council. When UN Resolution 794 passed, authorizing the U.S. to use “all necessary means”¹²⁸ to alleviate the human suffering in Somalia, the Unified Task Force (UNITAF) was launched on December 4, 1992.¹²⁹ Less than one year later, the Battle of Mogadishu occurred in which 18 Americans were killed and an additional 75 wounded.¹³⁰ Regarding this, Samuel Huntington wrote “[i]t is morally unjustifiable and politically indefensible that members of the [U.S.] armed forces should be killed to prevent Somalis from killing one another.”¹³¹ Considering the possibility that opposing views probably exist, it will be accepted nonetheless that Huntington is correct.

The backlash following the deaths of American soldiers in Somalia is believed to have directly resulted in the international community’s failure to organize a meaningful intervention in Rwanda the following year.¹³² Interventions have occurred elsewhere since then, but under a new strategy of “immaculate” intervention, where the intervening troops are exposed to an absolute minimum of risk. This strategy is believed to originate from the ethical tensions that result from states’ obligations to both humanity at large and its own citizens, including its obligations to its own soldiers who have (presumably)

¹²⁷ Kenneth Allard, *Somalia Operations: Lessons Learned*, 2005, CCRP Publications Series, Washington, DC : National Defense University Press, 11, http://dodccrp.org/files/Allard_Somalia.pdf.

¹²⁸ Andrzej Sitkowski, *UN Peacekeeping: Myth and Reality* (Westport, CT: Praeger Security International, 2006), 101.

¹²⁹ The U.S. operation was called Operation RESTORE HOPE; UNITAF was the U.S.-led multinational force.

¹³⁰ Allard, *Somalia Operations*, 17.

¹³¹ Quoted in Tan, “The Duty to Protect,” 108.

¹³² Des Forges, *Leave None to Tell the Story*, 619–620, 623–624; Cohen, *One Hundred Days of Silence*, 49–54.

agreed to serve in the military on the condition that they be used for national defense.¹³³ Ironically, this strategy leads to more civilian deaths. The NATO-led interventions in both Kosovo in 1999 and Libya in 2011 serve as examples of the doctrine of “priority of combatants,” where combatants are encouraged to give a higher priority to their own lives, as opposed to the lives of civilians.¹³⁴ The high-altitude bombings that took place in both campaigns claimed the lives of many civilians,¹³⁵ and although precision-guided munitions were used, the accuracy of those munitions would have been improved at lower altitudes, but at greater risk to the pilots. The decision to adopt airpower-only campaigns, in contrast to traditional boots-on-the-ground, demonstrates the priority of force-protection in these operations.¹³⁶ While the statesman’s desire to protect his nation’s fighting man is admirable, the decision to accept a higher rate of civilian casualties is not morally defensible. This is a clear-cut violation of the *jus in bello* principle of discrimination.¹³⁷

The extreme risk-averse nature of these operations is probably a result of the moral predicament a state may find itself in when called upon to conduct a humanitarian intervention. Soldiers sign up to defend their nation, among other things, and when the soldier—not the state—is called upon to conduct a humanitarian intervention, he could say, with some moral gravity, “[t]his isn’t what I signed up for.”¹³⁸ However, one could argue that although it may not be specified in a soldier’s contract that he may be required to participate in humanitarian interventions, it may be implied. Given the fact that hundreds of thousands of troops from dozens of nations have participated in

¹³³ Martin L. Cook, “‘Immaculate War’: Constraints on Humanitarian Intervention,” in *Just Intervention*, ed. Anthony F. Lang, Jr. (Washington, DC: Georgetown University Press, 2003), 145.

¹³⁴ Jeff McMahan, “The Just Distribution of Harm between Combatants and Noncombatants,” *Philosophy and Public Affairs* 38, no. 4 (Oct 2010): 342.

¹³⁵ Human Rights Watch estimates over 500 civilian deaths in Kosovo and at least 78 deaths in Libya that resulted from NATO airstrikes (“Civilian Deaths in the NATO Air Campaign,” Human Rights Watch, <http://www.hrw.org/sites/default/files/reports/natbm002.pdf>; “Unacknowledged Deaths: Civilian Casualties in NATO’s Air Campaign in Libya,” Human Rights Watch, <http://www.hrw.org/reports/2012/05/14/unacknowledged-deaths>).

¹³⁶ Cook, “Immaculate War,” 152–153.

¹³⁷ Thanks to James Pattison for this point.

¹³⁸ Cook, “Immaculate War,” 151.

peacekeeping operations, the possibility may be a little more than implied.¹³⁹ Another approach would be to suggest that if humanitarian intervention is not included in the soldier's agreement with his state, then it should be; that an expanded definition of the soldier's duties is in order. These solutions of implication or stipulation, however, do not hold up under consideration of true democratic principles.¹⁴⁰ To require a state, and its soldiers, to carry out humanitarian interventions would force it to place the interests of foreigners over those of its own citizens, which would effectively break the contract between the state and its citizens.¹⁴¹ While this is more of a realist view that places the material interests of a state over all other interests, including human rights, the argument has some validity here.

If a state accepts the duty to guard against human rights violations but also maintains its obligation to protect the interest of its own citizens, including its soldiers, then a third option is to employ a PMC. Under the moral tension that states, and other organizations, face as crimes against humanity occur the option is certainly a morally preferable one. A quick speculative look at the possible stakeholder views provides some insight: bearing only the financial cost, the citizens of states could be satisfied with a privatized solution, given the knowledge that they contributed in some way. Statesmen that work to secure funding could rightfully claim a moral victory as the crisis was stabilized. Employees of the PMC would be grateful for the opportunity, and eventually proud of their efforts. Indeed, the victims of genocide would probably not complain if their lives were saved by contractors instead of regular troops. However, PMCs still elicit a cacophony of moral objections that must be confronted. These will be addressed in Chapter 4, along with the origins of the modern PMC.

¹³⁹ Tan, "The Duty to Protect," 108; note also that over 800 soldiers from 43 countries have been killed during UN peacekeeping operations (Allard, *Somalia Operations*, 2).

¹⁴⁰ Tan, "The Duty to Protect," 108–109.

¹⁴¹ Deane-Peter Baker and James Pattison, "The Principled Case for Employing Private Military and Security Companies in Interventions for Human Rights Purposes," *Journal of Applied Philosophy* 29, no. 1 (2012): 6.

IV. FROM MERCENARY TO PEACEKEEPER: THE EVOLUTION OF THE PMC

There is an international norm against the use of mercenaries that dates back to the formation of modern nation-states and the formation of citizen armies. It originates with the birth of patriotism in the late 18th century, which gave rise to the notion that one could not honorably fight for a cause in which one did not have a personal stake, such as nationalism.¹⁴² Prior to that, the employment of mercenaries was a standard practice, but not without objections. As early as 400 B.C., huge formations of mercenaries are known to have been recruited to assist ancient rulers in their wars of conquest. During the Middle Ages, feudal powers preferred foreign-born professional soldiers for their skill in battle, especially against hastily-trained peasants. Some of these mercenaries were held in high regard.¹⁴³ Some still are; the oldest known, and longest-running, mercenary contract in history is held by the Vatican, whose Swiss Guard has provided security for the Pope since 1506.¹⁴⁴ Even through the 18th century, powerful armies were predominantly composed of mercenaries.¹⁴⁵ In fact, it is believed that the traditional military rank of “private” originates from the idea that a soldier’s enlistment was a “private financial contract” between a soldier and his commander.¹⁴⁶ These contracts still exist in some national armies, including the *Légion Etrangère* of the French army and the Royal Gurkha Rifles of the British army. Aside from these well-respected and legendary mercenary formations, somewhere along the way the idea of employing mercenaries became repugnant in most societies. In spite of the objections, and due to an enduring need for private military or security forces, the formation of the modern PMC became necessary. In this chapter, the evolution of the modern PMC will be traced from its

¹⁴² Sarah Percy, *Mercenaries* (New York: Oxford University Press, 2007), 121–122.

¹⁴³ Not all mercenary forces were regarded highly; some had a reputation for brutality (Wing, *Private Military Companies and Military Operations*, 5–6).

¹⁴⁴ Patterson, “Privatising Peace,” 41.

¹⁴⁵ The 18th century Prussian and British armies were nearly half foreign mercenaries (Wing, *Private Military Companies and Military Operations*, 7).

¹⁴⁶ Wing, *Private Military Companies and Military Operations*, 7.

mercenary origins to better understand the norms against PMC employment that exist today. Objections to their use will be addressed along the way in order to confront the issues associated with their employment. Finally, the suitability of modern PMCs for humanitarian intervention will be discussed by asking the question, can private warriors be ethical?

A. MERCENARIES OF THE PAST

The history of the mercenary is often said to go as far back as that of war itself. A complete treatment of this history is beyond the scope of this thesis. However, to better understand the origins of the norm against mercenary use, it is useful to briefly cover two periods before moving on to the modern PMC. First is the early period, which covers the broadest part of history from antiquity to World War II. This period could be called the “golden age” of the mercenary. Entire conflicts were fought by mercenary bands; it was a time when mercenary commanders were held in high regard and the citizen-soldier became known only towards the end when the motivations of the individual soldier became important. Second, the age of the “new mercenary” will be discussed. This most recent period of mercenary activity probably explains best why modern prohibitions against mercenary activity exist. It lasts through the post-colonial period from 1960 to 1981, beginning in the Congo after independence from Belgium and culminating with a failed coup in the Seychelles, attempted by a mercenary group. The events of those years gave rise to some of the most notorious figures in mercenary lore, and also the most robust objections to their use. Both periods are important to note because of the enduring effects they have on modern society’s view of mercenaries and the resulting effect on attitudes towards modern PMCs.

1. Golden Age Mercenaries

The “golden age” of mercenary activity reflects a time when it was more accepted that the ordinary citizen should stay home while the professional soldier should fight in wars.¹⁴⁷ The writings of Xenophon provide an early account of the Ten Thousand

¹⁴⁷ Anthony Mockler, *The New Mercenaries* (New York: Paragon House Publishers, 1987), 7.

Greeks, a legendary mercenary force of heavily-armored hoplites hired in 401 B.C. to fight a war in Persia. The story includes prophetic details of the intricate relationships between the mercenaries, their leaders, and the rulers that employ them; like all ancient adventure stories, there are victories, defeats and betrayals.¹⁴⁸ Mercenaries in Europe during the Middle Ages are much more well known, however. The groups available for hire in medieval Europe were known as “free companies,” a term that was adopted by modern militaries to refer to a unit of a size below battalion.¹⁴⁹ In Italy they were known as *condottieri*, in reference to the *condotta*, or contracts, that the Italian city-states signed with the mercenary captains they employed.¹⁵⁰ Some of these captains became heroes to the people of the cities they served; one example is Sir John Hawkwood, an English *condottiero* who served the city of Florence in the 14th century. He was so successful, and so well respected, that when he died he was buried in Florence’s main cathedral, the Duomo, where a fresco in his honor exists to this day.¹⁵¹

When not needed, these free companies, or *condottieri*, were not under the control of anyone, but continued to wield considerable coercive power wherever they were. When these groups found themselves unemployed, they often resorted to extortion. Even the revered Sir John Hawkwood was known to demand protection money. The city of Siena almost rivaled Florence in the 14th century until Hawkwood suggested that unless they were offered a substantial payment, he and his mercenary band may be inclined to raze the city. The amount extorted from the city at that time was so great that it is believed to have directly resulted in the city’s decline from a powerful city-state to a relatively unknown provincial village.¹⁵² The norm against their use however, did not likely come as a result of crimes perpetrated by a few groups. It originated from the view that mercenaries like Hawkwood did not fight for a suitable cause, as defined as a cause

¹⁴⁸ Mockler, *The New Mercenaries*, 9–10; see also Tim Spicer, *An Unorthodox Soldier: Peace and War and the Sandline Affair* (Edinburgh, United Kingdom: Mainstream Publishing, 2003), 30–31.

¹⁴⁹ Wing, “Private Military Companies and Military Operations,” 6.

¹⁵⁰ Percy, *Mercenaries*, 74–75.

¹⁵¹ Mockler, *The New Mercenaries*, 12–13.

¹⁵² Percy, *Mercenaries*, 75.

that contributes to the common good of a state. Not being formally aligned with a state other than under temporary contract, a mercenary could not be as effective as a citizen-soldier, who fights for his homeland. Also, by occupying a position that should be held by a citizen-soldier, the mercenary weakens the state; if the nation's strength lies with its armed forces, every member of those forces should also be a citizen of that nation.¹⁵³ Nonetheless, the idea that mercenaries were not appropriate actors on the battlefield was likely a result of the lack of effective control over them.¹⁵⁴

Niccolò Machiavelli was an early opponent of mercenaries, and his views have been influential.¹⁵⁵ In his book *The Prince*, he describes mercenaries as “useless and dangerous,” because their motives are only a “meagre wage” and that while they are “brave among friends; among enemies they are cowards.”¹⁵⁶ His first objection to their employment is that they are not willing to die for the cause for which they fight; he cites the showmanship with which mercenaries would fight other mercenaries in the endless wars between city-states, but as soon as a foreign invader stepped ashore in Italy, resistance from these hired *condottieri* was nonexistent. Machiavelli describes how opposing mercenary armies fail to fortify their camps, and fail to kill each other in combat; they would also take each other prisoner instead without demanding ransom. Not surprisingly, when Charles VIII of France invaded Italy in 1494, the same mercenaries failed to put up a meaningful resistance.¹⁵⁷ His second objection was that if a mercenary captain was incompetent, his employer was lost from the beginning; if the mercenary captain was capable, then it was only a matter of time before he would “aspire to [his] own greatness” and attempt to seize political control. Machiavelli mentions Florence's

¹⁵³ Percy, *Mercenaries*, 77.

¹⁵⁴ Percy, *Mercenaries*, 79.

¹⁵⁵ What follows is this author's interpretation of Machiavelli's views on the use of mercenary armies from the text of *The Prince*. For other discussions on the topic see Percy, *Mercenaries*, 76–77; Baker, *Just Warriors, Inc.*, 35–38; or Dunigan, *Victory for Hire*, 127.

¹⁵⁶ Niccolò Machiavelli, *The Prince*, trans. Peter Bondanella (New York: Oxford University Press, 1984), 42.

¹⁵⁷ Machiavelli's words are that Charles was “permitted to take Italy with a piece of chalk,” referring to the method Charles' soldiers would use to mark Italian homes designated for quartering troops (Machiavelli, *The Prince*, 42, 95 n42).

hero, Hawkwood, here. Machiavelli assumes that Hawkwood aspired to eventually seize control of Florence, but since he died before he could, his true loyalty “will never be known.”¹⁵⁸ He rejects the notion of placing citizen commanders in charge of mercenary troops as well. Here he cites the Carthaginians, who were nearly overthrown by the mercenary soldiers they employed during their first war with Rome, in spite of having Carthaginian citizens as officers.¹⁵⁹ Machiavelli’s third objection is to the general substitution of citizen soldiers with mercenaries and the resulting degradation in the loyalty and ferocity of a state’s armed forces. Using the example of Venice, he notes how well Venetian noblemen and citizens fought until they became overextended and began to rely on mercenaries like almost every other city-state. After this “mistake,” Machiavelli describes how Venice became more concerned with minding its losses instead of enjoying its acquisitions, citing the Venetian defeat by France at Vailà in 1509, a single day in which Venice lost “what had cost them eight hundred years...to acquire.”¹⁶⁰ He alleges that only armed republics or princes in command of citizen-soldiers make true progress; mercenary troops and their captains diminish the prestige of citizen-soldiers, weaken the state, and by the 16th century, had “led Italy into slavery and humiliation.”¹⁶¹

Machiavelli’s bitter treatment of mercenaries comes during a time of heavy foreign invasion in a fractured political environment. Competing city-states were constantly at war and thus unable to unite against any invader. Since the use of mercenaries had become so widespread by necessity, it would follow that most defenders against an invasion would also have to be mercenaries. Political leaders could not unite against an invasion, so neither would any mercenary force. Machiavelli’s objections of dubious motivations, malicious intent, and the resulting degradation of state prestige leveled at mercenaries would probably have been remedied by a coalition of willing city-states or a large standing force of professional Italian soldiers; however, given the political climate of the time, this was not a viable solution. Furthermore, none of his

¹⁵⁸ Machiavelli, *The Prince*, 43.

¹⁵⁹ Machiavelli, *The Prince*, 43.

¹⁶⁰ Machiavelli, *The Prince*, 44, 96 n44.

¹⁶¹ Machiavelli, *The Prince*, 41–45.

objections reflect a moral failing: to do a job in exchange for money is not unique to mercenaries; seeking to improve one's station in life is actually a supererogatory duty in modern ethics; and the diminishing effect of privatizing force on the status of domestic forces should be attributed to the state alone, if applicable.¹⁶² Machiavelli acknowledges that Italy brought devastation upon itself, but that does not prevent him from directing some blame to the mercenaries, diminishing their moral standing nonetheless.

The irony of Machiavelli's indignation toward the performance of the mercenaries in Italy during the invasion of Charles VIII of France in 1494 is that Charles' force was composed of mostly mercenaries: German axemen, Swiss halberdmen, and Gascon crossbowmen.¹⁶³ They performed so well that France maintains the practice of employing mercenaries, through the formation of the *Légion Etrangère* in 1831 to the present.¹⁶⁴ In spite of the known drawbacks, the employment of mercenaries was so widespread that even after the 1648 Treaty of Westphalia, from which the modern nation-state was born, the practice continued. By the time of the American Revolution, however, the employment of mercenaries had become despicable in popular opinion.¹⁶⁵ The employment of Hessian troops by the British was strongly condemned by the Americans and could have contributed to the failure of the British to keep its colony, especially after their defeats at Trenton and Saratoga Springs, and after more than 5,000 of them deserted. It also left a permanent hatred for mercenaries, one that arguably exists to this day, in the minds of most Americans.¹⁶⁶

¹⁶² Baker also addresses the moral relevance of Machiavelli's claims (Baker, *Just War, Inc.*, 36–38).

¹⁶³ Mockler, *The New Mercenaries*, 19–20.

¹⁶⁴ As of this writing, the French Foreign Legion is being employed against Islamic extremists in Mali (see Matthieu Mabin, "Exclusif : Sous le Feu des Djihadistes du Nord-Mali avec les Légionnaires," *France 24*, 14 March 2013, <http://www.france24.com/fr/20130313-mali-ifoghas-legionnaires-francais-affrontement-djihadistes>).

¹⁶⁵ The reasons for this loosely mimic Machiavelli's objections: the mercenaries lacked the right motive to fight in America; they weakened the greatness of Britain; and they were on the wrong side of a just cause. A fourth objection was that their "purchase" was akin to an act of trading human flesh (Percy, *Mercenaries*, 152–156).

¹⁶⁶ Mockler, *The New Mercenaries*, 4–5.

2. The New Mercenaries

The colonial era and the wars of national existence of the early 20th century finally gave way to the era of the “new mercenary,” the modern-day Soldier of Fortune upon which most opinions of mercenaries are now based. Existentialist wars like World War II do not generate a need for mercenaries; the total war concept where the whole of a nation’s resources are levied against an enemy simply leaves no market for them. The post-colonial era that followed, however, and the multitude of civil wars that erupted after many colonies were granted independence is a different story.

One such conflict, the Congolese civil war following independence from Belgium in 1960, is the veritable womb of the new mercenary. The troubles there began immediately after independence when the *Force Publique* began to massacre any Belgian nationals who had not left the Congo before independence. One Congolese province, Katanga, attempted to secede but was helpless in the face of the Simba Rebellion, a ruthless group that had defeated the Congolese Army and was raping, looting, and murdering its way across the Congo and into Katanga. With no other option, the Katangese President hired a mercenary group led by Mike Hoare called “5 Commando” to fight the Simbas.¹⁶⁷ The unit, and others, including “6 Commando” under Bob Denard and “10 Commando” under “Black Jack” Schramme, participated in missions throughout the Congo but were vilified in the international community for their participation in what was viewed as a war of secession between the legitimate Congolese government and a renegade province, Katanga. The mercenaries’ status as villains was clinched when they fought Ethiopian UN troops in a confused and possibly accidental firefight. Several of the UN troops were killed and approximately thirty mercenaries were captured.¹⁶⁸ In spite of some successes, including the “5 Commando” rescue of some Belgian nuns held by Simbas in Albertville,¹⁶⁹ the mercenaries in the Congo were viewed by the UN as being on the wrong side of the conflict.

¹⁶⁷ Spicer, *An Unorthodox Soldier*, 35–36.

¹⁶⁸ Mockler, *The New Mercenaries*, 45–47; the mercenaries were released soon afterwards. Their captain, Richard Browne, was deported but soon found his way back to Katanga.

¹⁶⁹ Spicer, *An Unorthodox Soldier*, 36.

Other groups were more bloodthirsty, most notably the one led by “Colonel Callan,” a Greek Cypriot whose real name was Costas Georgiou. As the leader of a mercenary crew recruited in 1975 to fight the *Movimento Popular de Libertação de Angola* (MPLA) and their Cuban allies in Angola, Callan quickly became known for his ruthlessness. He fought on the side of the guerrilla movement *Frente Nacional de Libertação de Angola* (FNLA), along with hundreds of other mercenaries from all over the world. Callan was remarkable, however, for his penchant for murder. Aside from routine killings of MPLA prisoners, Callan was known to casually execute FNLA troops who simply exhibited signs that they may desert. In one alleged incident Callan “tested” a double-barreled shotgun by putting its barrel in the mouth of one of his own FNLA soldiers and pulling the trigger. After operating for nearly a year with a complete disregard for human rights, this obvious sociopath was eventually captured and executed by the MPLA for ordering the execution of fourteen of his own men.¹⁷⁰

Mercenary participation in these conflicts directly led to the AU’s 1977 Convention for the Elimination of Mercenarism in Africa, and the UN’s 1989 International Convention against the Recruitment, Use, Financing and Training of Mercenaries.¹⁷¹ In addition to these conventions, other conflicts and similar stories in Nigeria, Angola, the Seychelles, and other places from 1960–1981 provide the genesis of the current popular view of mercenaries as immoral, thrill-seeking thugs willing to sell their services to anyone.¹⁷² As the examples presented here suggest, the idea is not without merit; but with a closer understanding of the objections to mercenary use it is possible to separate the immoral behavior of a few individuals and determine what is intrinsically immoral about being a mercenary.

¹⁷⁰ Mockler, *The New Mercenaries*, 170–231; Mockler alleges that the FNLA leader, Holden Roberto, hired the mercenaries with money provided by the CIA, ostensibly because he was fighting against a Communist regime.

¹⁷¹ “OAU Convention for the Elimination of Mercenarism in Africa;” “International Convention against the Recruitment, Use, Financing and Training of Mercenaries.”

¹⁷² Spicer, *An Unorthodox Soldier*, 37.

As previously mentioned, the idea that mercenaries were not appropriate actors on the battlefield was likely a result of the lack of effective control over them. From the *condottieri* to Callan, instances of abuse seem to have validated that argument. But the argument fails; simply because a right can be abused does not invalidate that right or imply that it cannot be used justly. Hence, the bad behavior of some mercenaries is not a valid reason to deem all mercenaries immoral, *a priori*.

A more convincing argument is that two normative shifts in modern societies have brought about a norm against mercenary use: first, the moral change in the relationship between citizen and state; second, the moral change in the decision to employ citizens in national armies.¹⁷³ States recognized the need to employ citizen armies, and citizens recognized that they had a patriotic duty to serve in the army. This suggests that these normative shifts were not a result of mercenary activity; rather, they are a product of a normal evolution in society. This explanation is referred to elsewhere as the “state-building argument,”¹⁷⁴ and explains how neither the *condottieri* nor Callan would be acceptable today. This duty of state to citizen and citizen to army necessitates the moral prohibition of mercenaries; however, it opens a different market for modern PMCs.

B. THE NEW CORPORATE WARRIORS

Modern-day PMCs are not mercenary organizations.¹⁷⁵ Their corporate structure distinguishes them from their distant mercenary cousins, as does the era in which they operate. The rise of the modern PMC has been chronicled by several authors, most notably by P. W. Singer in his widely-cited book *Corporate Warriors*. Singer characterizes PMCs as a business, “first and foremost,” and often part of larger multinational corporations with diverse interests.¹⁷⁶ PMCs represent the newest incarnation of military service providers, but are very different from the *condottieri* or Hessians

¹⁷³ Percy, *Mercenaries*, 121.

¹⁷⁴ Janice E. Thomson, *Mercenaries, Pirates, and Sovereigns: State-building and Extraterritorial Violence in Early Modern Europe* (Princeton, NJ: Princeton University Press, 1994), 86.

¹⁷⁵ Deborah Avant, “Think Again: Mercenaries,” *Foreign Policy* (July 2004): 21–22.

¹⁷⁶ Singer, *Corporate Warriors*, 40.

previously described.¹⁷⁷ Their re-emergence in the post-Cold War arena was the result of a rising demand for military forces due to the effects of civil war and failed states, a burgeoning supply of unemployed soldiers in the post-Cold War era, and a growing political theory that supported privatizing public functions.¹⁷⁸ PMC employees have served by the thousands in the American wars in Iraq and Afghanistan, yet there still exists strong moral opposition to their use. A complete history of the rise of PMCs is outside of the scope of this thesis;¹⁷⁹ instead, the ethical objections to their use will be discussed in this section. Other than some contingent objections based on hypothetical expectations of abuse, there are effectively no valid objections to the employment of PMCs in principle and under the right conditions.

Avant describes PMCs as firms that provide “violent services,”¹⁸⁰ and Singer puts them at the business end of his “tip of the spear” typology.¹⁸¹ Before proceeding it is useful to present a more comprehensive definition of a PMC, written by Tim Spicer, OBE,¹⁸² the founder of the PMC Sandline International:

A PMC...offers a packaged service covering a wide variety of military and quasi-military skills...PMCs are permanent structures, corporate entities, which are run like a business. They have a clear hierarchy, are run on military lines and operate to high disciplinary standards and within the law of armed conflict, with a particular concern for human rights.¹⁸³

The last part of this definition is of concern here. For PMCs to be effective in this century, they must operate with a high regard for human rights issues. This is understood by the PMC professional organization, the International Stability Operations Association

¹⁷⁷ Singer, *Corporate Warriors*, 45.

¹⁷⁸ Kateri Carmola, *Private Security Contractors and New Wars: Risk, Law and Ethics* (New York: Routledge, 2010), 40–41; see also Schreier and Caparini, “Privatising Security,” 5.

¹⁷⁹ For a comprehensive look at the rise of PMCs from the 1990s to the present, see Singer, *Corporate Warriors*; Spicer, *An Unorthodox Soldier*; Barlow, *Executive Outcomes*; Simon Mann, *Cry Havoc* (Croydon, United Kingdom: John Blake Publishing, 2011); or Christopher Kinsey, *Corporate Soldiers and International Security: The Rise of Private Military Companies* (New York: Routledge, 2006).

¹⁸⁰ Avant, *The Market for Force*, 1.

¹⁸¹ Singer, *Corporate Warriors*, 93.

¹⁸² Officer of the Most Excellent Order of the British Empire (OBE)

¹⁸³ Spicer, *An Unorthodox Soldier*, 41.

(ISOA), whose “Code of Conduct” requires that its members adhere to no less than ten international conventions, including the Geneva Convention, the Convention Against Torture, and the Montreux Document on Private Military and Security Companies, among others.¹⁸⁴ In spite of these internal efforts at regulation, the stigma of past events endures, and moral objections to the use of PMCs remain.

The debate about PMCs can be divided into two camps: those that view PMCs as legitimate business ventures with a valid place in the international arena, and those that view them as re-treaded classical mercenaries that only see dollar signs through the smoke of conflict.¹⁸⁵ The latter group has valid concerns that should be addressed, because they relate directly to the suitability of PMCs to conduct humanitarian intervention missions. Decision makers who view PMCs as a new form of mercenary organization apply the same objections to PMCs as they would to mercenaries of the past. Sarah Percy asserts in a radio interview that moral objections against the use of mercenaries are “entirely illogical but they’re very deeply held.”¹⁸⁶ To shake the mercenary stigma and provide a more lucid illustration of the modern PMC, some objections will be addressed here.

While not every objection can be covered here, the three major ones will be discussed. First, the most commonly heard objection is that PMCs are not accountable to anyone. This is a valid concern, due to some high profile transgressions, including gross human rights violations perpetrated by some PMC employees that resulted in no meaningful prosecutions.¹⁸⁷ Many scholars seek to remedy the accountability issue by proposing stricter regulation and systems of accountability on the operations conducted

¹⁸⁴ “ISOA Code of Conduct,” version 13.1, *ISOA*, <http://stability-operations.org/index.php>.

¹⁸⁵ Carlos Ortiz, *Private Armed Forces and Global Security* (Santa Barbara, CA: Praeger, 2010), 7.

¹⁸⁶ Sarah Percy in an interview with Keri Phillips, “Private Military and Security Companies,” on *Radio National: Rear Vision*, 26 August 2012, <http://www.abc.net.au/radionational/programs/rearvision/private-military-and-security-companies/4210590#transcript>.

¹⁸⁷ Examples include the unjustified killings of seventeen Iraqi civilians by Blackwater employees in Baghdad in 2007 and the discovery of a sex trafficking ring being run by DynCorp employees in Bosnia (Laura A. Dickinson, *Outsourcing War and Peace: Preserving Public Values in a World of Privatized Foreign Affairs* (New Haven, CT: Yale University Press, 2011), 1–2).

by these companies.¹⁸⁸ However, it will be shown that there are existing regulatory mechanisms in place that can be effective, including the codes of ethics maintained by industry-wide organizations, international conventions, and most importantly, the principal agent's responsibility for his agent's behavior. A second objection is to the motive of profiteering. This is also a valid concern, since contractors in Iraq have been known to overcharge the government to the tune of millions of dollars for services that were either performed to a substandard degree or not at all.¹⁸⁹ This objection is followed by the assertion that money is not a just motivation for putting oneself into harm's way; but in spite of the blatant and organized theft by a number of U.S. contractors in the first decade of the 21st century, it will be shown that it is not immoral to do a job in return for payment, even if it involves killing in just defense. The third objection that follows is concerned with PMC use as a violation of the social contract, which asserts that states alone should hold a monopoly on the use of violence. This objection would be valid in a perfect world, but PMCs have already challenged states' monopoly on the use of force. The increasingly large role that private contractors have played in the conflicts of the last two decades, especially in Iraq, is strong evidence that privatized force is no longer a "nice to have," it is now a necessary component of war fighting, and will likely continue to be so.¹⁹⁰

¹⁸⁸ Schreier and Caparini, "Privatising Security," 134–140; Marcus Hedahl, "Blood and Blackwaters: A Call to Arms for the Profession of Arms," *Journal of Military Ethics* 8, no. 1 (2009): 25. Hedahl acknowledges that the imposition of regulation comparable to that of public forces would be a death knell for PMCs.

¹⁸⁹ DynCorp was found to have charged the U.S. State Department \$43.8 million for the upkeep of an empty training camp. \$4.3 million of that payment was found to have been used to purchase luxurious accommodations and an Olympic-sized pool for DynCorp employees (Dickinson, *Outsourcing War and Peace*, 1–2). See also Walter Pincus, "Audit Finds Iraq Contractor Overbilled for Vehicle Parts," *The Washington Post*, 30 October 2009, http://articles.washingtonpost.com/2009-10-30/world/36917384_1_iraq-contractor-special-inspector-stuart-w-bowen; "Pentagon: Halliburton Overcharged in Iraq," *Fox News*, 12 December 2003, <http://www.foxnews.com/story/0,2933,105509,00.html>; and the documentary film by Robert Greenwald, *Iraq for Sale: The War Profiteers* (Brave New Films, 2006).

¹⁹⁰ Avant, *The Market for Force*, 1–2.

1. Accountability

Human rights abuses by employees of PMCs have happened and the employees are usually not punished. An often-cited case is the human trafficking and child prostitution cases committed by DynCorp employees in the Balkans.¹⁹¹ Another well-known case is the involvement of CACI International¹⁹² and Titan employees in the Abu Ghuraib torture case.¹⁹³ There is also the murder of seventeen civilians in Baghdad's Nisour Square by Blackwater security guards.¹⁹⁴ In yet another case of egregious behavior by a PMC employee, Jacob Washbourne, an employee of Triple Canopy, allegedly declared "I want to kill somebody today," before going out on a convoy. That day, Washbourne was later found to be involved in three unjustified shooting incidents. After a short internal investigation by Triple Canopy, Washbourne was fired.¹⁹⁵ In fact, little more than being fired is all that happened to any of the offenders in these cases.¹⁹⁶

Not surprisingly, opponents of PMCs charge that companies can do whatever they want, wherever they want, and that legal and ethical oversight is nonexistent.¹⁹⁷ These cases seem to support this, but as Chia Lehnardt argues, PMCs do not, in fact, operate in a legal vacuum. Responsibility for these incidents arguably lies with the state or other

¹⁹¹ Jan Grofe, "Human Rights and Private Military Companies: A Double-Edged Sword too Dangerous to Use?," in *Private Military And Security Companies: Chances, Problems, Pitfalls And Prospects* ed. Thomas Jäger and Gerhard Kümmel (Wiesbaden: Verlag für Sozialwissenschaften, 2007), 243.

¹⁹² CACI most recently stood for "Consolidated Analysis Center, Incorporated," but the acronym alone has been company's name since 1973.

¹⁹³ Grofe, "Human Rights and Private Military Companies," 243.

¹⁹⁴ For a detailed account of that incident, and several others, see Scahill, *Blackwater*, 3–48.

¹⁹⁵ Steve Fainaru, "Four Hired Guns in an Armored Truck, Bullets Flying, and a Pickup and a Taxi Brought to a Halt. Who Did the Shooting and Why?," *The Washington Post*, 15 April 2007, <http://www.washingtonpost.com/wp-dyn/content/article/2007/04/14/AR2007041401490.html>; see also Steve Fainaru, *Big Boy Rules: America's Mercenaries Fighting in Iraq* (Philadelphia, PA: Da Capo Press, 2008), 26–29. Washbourne denies this as has filed a defamation lawsuit against Fainaru (Kevin Koeninger, "Ex-Marine Says Pulitzer Winner Defamed Him," *Courthouse News Service*, 19 October 2011, <http://www.courthousenews.com/2011/10/19/40742.htm>).

¹⁹⁶ Five of the Blackwater employees were charged with involuntary manslaughter, but were not convicted.

¹⁹⁷ Schreier and Caparini, "Privatising Security," 66–70.

entity that employed the PMC.¹⁹⁸ Unfortunately, that responsibility is infinitely easy to circumvent by allowing the full blame to be placed on not only the PMC, but also the entire PMC industry. While most authors call for more regulation,¹⁹⁹ the regulatory mechanisms already in place remain largely ignored, except for by a few academics. Ortiz outlines a number of laws, licensing mechanisms, and codes of conduct already in place that govern the conduct of PMCs.²⁰⁰ Furthermore, the International Criminal Court (ICC) already has the duty to prosecute crimes committed internationally, whether it is perpetrated by a private individual or a PMC employee.²⁰¹ While the study of the regulation of PMCs constitutes a separate subject and beyond the scope of this thesis, for the sake of clarity and to effectively deal with this objection, some of the regulatory mechanisms that govern the conduct of PMCs are: International Traffic in Arms Regulation (ITAR), a licensing method; International Humanitarian Law (Anti-Mercenary Convention);²⁰² and the Montreaux Document, a guide to “good practices” in the industry.²⁰³

These methods of regulation seem to be sufficient, yet they are certainly not all that exist. They simply serve as examples of a wide range of mechanisms available for external regulation of PMC activity. Their efficacy is questionable in most cases, however. International law is notoriously difficult to enforce, as are codes of conduct,

¹⁹⁸ Chia Lehnardt, “Private Military Companies and State Responsibility,” in *From Mercenaries to Market: The Rise and Regulation of Private Military Companies*, ed. Simon Chesterman and Chia Lehnardt (New York: Oxford University Press, 2007), 139–157.

¹⁹⁹ Grofe, “Human Rights and Private Military Companies,” 253.

²⁰⁰ See Table 5.1 in Ortiz, *Private Armed Forces and Global Security*, 142. It must be acknowledged, however, that the bulk of legally binding rules outlined by Ortiz apply only to U.S. PMCs, and that these may be fairly easy to circumvent. Regulations generated by international organizations, such as conventions and codes of conduct, are non-binding due to the lack of any enforcement mechanism except for that provided by member states, which circles back to the base need for PMCs.

²⁰¹ Katja Weigely and Frank Märker, “Who is Responsible? The Use of PMCs in Armed Conflict and International Law,” in *Private Military And Security Companies: Chances, Problems, Pitfalls And Prospects*, ed. Thomas Jäger and Gerhard Kümmel (Wiesbaden, Germany: Verlag für Sozialwissenschaften, 2007), 392.

²⁰² Ortiz, *Private Armed Forces and Global Security*, 137–138.

²⁰³ “Montreux Document on Pertinent International Legal Obligations and Good Practices for States Related to Operations of Private Military and Security Companies during Armed Conflict,” *Journal of Conflict & Security Law* 13, no. 3 (2009), 451–475.

even with a self-regulating, governing body such as the ISOA that is accepted in the industry. Considering this, the PMCs contract would be the most effective method of holding PMCs accountable, as agents of a principal employer.²⁰⁴ Thus, far, objections have focused on the PMC themselves, or the agent to be employed to carry out the intervention. However, the principal that hires the PMC should be ultimately responsible for the activities of the PMC.²⁰⁵ This is not to say that PMCs should not be held accountable; on the contrary, it is to suggest that the current systems are sufficient for PMC regulation, but also that the onus must be placed on the employer to hold the employee accountable.

2. Profiteering

The objection that it is wrong to profit from war has been raised many times, but the logic of an individual expecting payment for a service is not controversial.²⁰⁶ In fact, the motives of individuals willing to provide violent services would be most questionable if they did *not* require reasonable amounts of money as payment. These individuals would fit nicely into yet another mercenary definition, Mockler's "real mark of the mercenary – a devotion to war for its own sake."²⁰⁷ An issue that does raise valid concerns is the controversy surrounding contractors' *overcharging* for services delivered in wartime. U.S. Congressmen have discovered massive payments to Halliburton in the past, while fearing that they may only be "the tip of the iceberg."²⁰⁸ The suspicions raised by incidents uncovered during the Iraq War should not color attitudes towards all contractors, however. Other PMCs have provided effective services for relatively small sums.²⁰⁹

²⁰⁴ Dickinson, *Outsourcing War and Peace*, 71.

²⁰⁵ Pattison addresses the moral culpability of the employers of contracted combatants (James Pattison, "Deeper Objections to the Privatisation of Military Force," *The Journal of Political Philosophy* 18, no. 4 (2010): 435–446).

²⁰⁶ A strong argument refuting the immorality of a profit-based motive can be found in Cécile Fabre, "In Defence of Mercenarism," *British Journal of Political Science* 40, no. 3 (July 2010): 550–553.

²⁰⁷ Mockler, *The New Mercenaries*, 17.

²⁰⁸ Jim Miklaszewski, "Pentagon Audit Reveals Halliburton Overcharges," *NBC News*, 15 March 2005, <http://www.nbcnews.com/id/7201320/ns/nbcnightlynews/t/pentagon-audit-reveals-halliburton-overcharges/#.UYH6x8p0l8E>.

²⁰⁹ See the case study on EO in Sierra Leone in Chapter 6.

Another concern with profit-seeking PMCs is that they make it easier for states to go to war. Interestingly, this is one of the same criticisms of Just War Theory. Walzer discusses this same objection in defense of JWT by pointing out that there are acts of aggression and crimes against humanity that should be resisted by force, using the example of the Nazis in World War II. He further points out that, in his opinion, a military intervention to stop the genocide in Rwanda in 1994 would have been a just war, and that an easier road to war in that case would have been beneficial, not detrimental.²¹⁰ It follows that the same would be true if a force-provider PMC had been hired to intervene in that same situation; in certain cases, the availability of contracted combatants could have made a significant difference in the lives of thousands of people. A follow-up concern to that is that PMCs make it easier for states to prosecute a war without obtaining the approvals usually required in a democratic society. The approvals are in place to minimize the use of violence, and PMCs allow principals to circumvent that.²¹¹ This assumes that PMCs will accept any job and that politicians are willing to get their hands dirty. Yet another concern is that profit-seeking PMCs could disrupt peace processes because it is in their best interests for conflict to continue. Shearer disputes this, and notes that “coercion is often essential to breaking deadlocks and bringing opposing parties to the negotiating table.”²¹² In a scenario such as this, PMCs would be part of the solution, not the problem. This objection is analogous to the idea that a firefighter would be likely to go out and commit arson in the interests of his job security. This is certainly possible; but highly unlikely and not a good basis for an objection against the moral permissibility of firefighters. It has also been suggested that PMCs used in an intervention could subsequently be illicitly used to dominate the population, expand territory, or take control of an invaded territory’s resources. This is another criticism of JWT, and like the objection that PMCs undermine the democratic control of violence, amounts to a distortion of the actual reasons for embarking on a military intervention by substituting a more nefarious intention that may not exist. Walzer writes in his response to this

²¹⁰ Michael Walzer, *Arguing About War* (New Haven, CT: Yale University Press, 2004), x–xi.

²¹¹ Pattison, “Deeper Objections to the Privatisation of Military Force,” 426.

²¹² Shearer, “Outsourcing War,” 69.

criticism, "...if critics can distinguish between concocted excuses for war and actual reasons, why can't the rest of us do the same thing?"²¹³ Wars of aggression, conquest, or economic advancement are unjust wars and are not permissible, and should not be fought by anyone, including PMCs.

Finally, there is some empirical evidence that contractors are not motivated by money alone. In a survey of more than 200 contractors, Franke and Von Boemcken found that the motivations of contractors serving in Iraq and Afghanistan were similar to those of their counterparts in uniform. Like other military professionals, they believe in a high standard of professionalism, codes of ethical conduct, and most importantly, motivated by a self-imposed duty to serve in the interests of the greater good.²¹⁴

3. Providing "Violent Services"

Another major issue with the employment of PMCs is the belief that they represent a violation of the state's monopoly on the use of violence per the terms of the Social Contract. The legions of contractors that have already deployed throughout the world, however, would suggest that the notion that states still maintain that traditional monopoly on the use of violence is already outdated. Therefore, a more relevant objection would be that PMCs may challenge states' ability to control the use of violence.²¹⁵ The regulatory mechanisms discussed in the previous sections are a good reference for questions of control, but so is the question of the professionalism of the PMC employee.

What follows is the objection that PMC employees are immoral because they kill for money. Alleging that PMC contracts are hunter-killer in nature, or are assassination-based activities is a distortion of the true nature of a typical force-provider PMC operation. As will be shown in Chapter 6, PMCs are usually hired to carry out a mission with a terrain-based objective; nowhere should it be stated that killing *is* the objective.

²¹³ Walzer, *Arguing About War*, xi.

²¹⁴ Volker Franke and Marc von Boemcken, "Guns for Hire: Motivations and Attitudes of Private Security Contractors," *Armed Forces and Society* 37 (4): 725.

²¹⁵ Avant, *The Market for Force*, 1–3.

However, just defensive killings are an integral part of armed conflict, and should be expected. If the war is just, then killings carried out in the prosecution of that war and in defense of other people's lives are justified.²¹⁶ In fact, an enemy fighting in support of genocide has ostensibly forfeited his right to life, and killing him would be morally permissible, whether by a PMC employee or soldier.²¹⁷

4. Can Private Warriors Be Ethical, Then?

In spite of examples of sociopaths like Washbourne, there is really no evidence that PMC employees are more likely to engage in human rights violations than their counterparts in uniform.²¹⁸ Can private warriors be ethical, then? Deane-Peter Baker asks this question and concludes that they can. He asserts that their moral status is no different from regular soldiers of a state.²¹⁹ With consideration of the objections previously discussed, the same conclusion is reached here. Of course, not every possible objection can be addressed, but the most important ones have. In this section it has been shown that the accountability issue is exaggerated, and requires no new regulatory mechanisms; the ones already in place are sufficient. The immorality of the profiteering motive has been determined to be false, and issues with privatized provision of violent services have been addressed. Following this, one can conclude that PMCs could potentially be morally suitable for employment in armed conflict, including humanitarian intervention, but further discussion is necessary. In the next section, concepts and issues associated with the employment of PMCs for humanitarian intervention will be discussed.

C. PMCS AND HUMANITARIAN INTERVENTION

Why not, when nations have already lost the monopoly of violence, consider creating volunteer mercenary forces organized by private corporations to fight wars on a contract-fee basis for the United Nations...Governments unwilling to send their own young men and

²¹⁶ Fabre, "In Defence of Mercenarism," 543–545.

²¹⁷ Shannon E. French, "Warrior Transitions: From Combat to Social Contract," United States Naval Academy, January 2005 JSCOPE, 10.

²¹⁸ Lehnardt, "Private Military Companies and State Responsibility, 139.

²¹⁹ Baker, *Just Warriors, Inc.*, 181.

women to die in combat...might have fewer reservations about allowing the UN to contract with a non-political, professional fighting force made up of volunteers from many nations—a rapid-deployment unit for hire.²²⁰

As the preceding quote suggests, the idea that PMCs could be employed to conduct humanitarian intervention has been proposed by a number of theorists.²²¹ There are PMCs that have proposed the idea themselves,²²² which demonstrates willingness and the presumed capability to carry out the mission on the part of the PMC. Pattison argues that the employment of a PMC to conduct a humanitarian intervention can be morally permissible.²²³ Furthermore, as argued in Chapter III, the employment of a PMC in this case may be morally preferable, on the grounds that humanitarian interventions are not typically part of the agreement between the state and the individual who volunteers to join that state's armed forces.²²⁴ Given what has been presented, a simple framework to guide ethical private intervention is required, so in Chapter V, a theory of ethically justified private intervention based on Just War Theory will be presented.

²²⁰ Alvin and Heidi Toffler, quoted in Simon Sheppard, "Foot Soldiers of the New World Order: The Rise of the Corporate Military," *New Left Review* (March 1998): 138.

²²¹ Singer, "Peacekeepers, Inc.," 59–70; Shearer, *Private Armies and Military Intervention*, 77; Don Mayer, "Peaceful Warriors: Private Military Security Companies and the Quest for Stable Societies," *Journal of Business Ethics* (2010) 89: 387–401; Baker, *Just Warriors, Inc.*, 161–178; James Pattison, "Outsourcing the Responsibility to Protect: Humanitarian Intervention and Private Military and Security Companies," *International Theory* 2:1 (2010): 1–31; Patterson, *Privatising Peace*.

²²² Singer, *Corporate Warriors*, 185–186; Barlow, *Executive Outcomes*, 441.

²²³ Pattison, "Outsourcing the Responsibility to Protect," 10.

²²⁴ Baker and Pattison, "The Principled Case for Employing Private Military and Security Companies," 6–11.

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V. THEORETICAL FRAMEWORK

We shall know nothing until we know whether we have the right to kill our fellow men, or the right to let them be killed. In that every action today leads to murder, direct or indirect, we cannot act until we know whether or why we have the right to kill.²²⁵

Once the decision is made to intervene, and a responsible principal finds it necessary to hire a PMC, then an ethical guideline under which to carry out the intervention becomes necessary. Existing guidelines, such as the Montreaux Document and the ISOA Code of Conduct,²²⁶ are useful for lists of “good practices” directed at industry professionals; but these good practices should be observed alongside a theory of ethically justified private intervention, which aims to provide a more flexible guideline for ethical conduct in a broad range of circumstances. Before the theory can be formulated, however, the validity of a few arguments must be accepted. First, one must accept the arguments that humanitarian intervention is morally obligatory under certain circumstances, there exists conditions under which it can be permissible to outsource intervention, and that soldiers employed by a PMC are not different than any other soldier in any morally relevant way. Next, if it is not controversial to say that a war is just when it is prosecuted under the principles of Just War Theory, then it follows that an armed humanitarian intervention conducted by a PMC would also be just, if it is carried out under an appropriately modified version of the same theory. The former three arguments have been presented in the previous chapters of this thesis; the latter argument will be presented for the remainder.

The unique problems that PMCs pose to ethical intervention must be addressed by any such theory. Beginning with traditional Just War Theory as a baseline, appropriate criteria will be identified and defined as they apply. To accomplish this, a brief overview

²²⁵ Albert Camus, *The Rebel* (New York: Vintage International, 1991), 4.

²²⁶ For a comprehensive analysis of the Montreaux Document, see James Cockayne, “Regulating Private Military and Security Companies: The Content, Negotiation, Weaknesses and Promise of the Montreaux Document,” *Journal of Conflict and Security Law* 13, no. 3 (2009):401–428; and Mayer, “Private Military Companies and the Quest for Stable Societies,” 394–397.

of Just War Theory as it exists in the current literature will be presented, and traditional criteria will be described as they relate to PMCs and intervention. Considering the hypothetically consequentialist nature of the mutual contractual obligations between the principal and agent, the criteria from Just War Theory given the most weight are non-consequentialist in nature. Of particular interest and relevance are the *jus ad bellum* principles of right authority, just cause, and right intention; and the *jus in bello* criteria of proportionality and discrimination. Within these criteria lies a major challenge for PMCs: legitimacy. Traditional legitimacy, or right authority, came from a state official or equivalent; the principal agent of a PMC may not have that status. Therefore, it is necessary to recall Pattison's Moderate Instrumentalist Approach from Chapter II, where it is proposed that legitimacy is derived from effectiveness, and that only a legitimate intervention force can achieve a desirable outcome. If accepted, this approach could exclude some state forces and international organizations, such as the UN. While Pattison's framework is designed to determine who is most suitable to conduct an intervention, its criteria will be used here as consequentialist determinants of ethical performance in an intervention. Of special interest within this framework as it relates to PMCs is internal *jus in bello*. Pattison identifies this criterion as especially problematic for PMCs,²²⁷ but the opposite will be argued here. Either way, the criterion is important to include in this theory of ethically justified private intervention exactly because of the potential problems it poses. Finally, so as to present a complete theory that does not exclude conflict termination, a final *jus post bellum* criteria will be presented that takes into account the special nature of PMCs in conflict as peacemakers, not necessarily peacebuilders. Since there is no satisfactory *jus post bellum* criterion available, a new one will be presented—just transfer of authority.

²²⁷ Pattison, *Humanitarian Intervention and the Responsibility to Protect*, 209.

A. SOME CRITERIA FOR ETHICALLY JUSTIFIED PRIVATE INTERVENTION: JUST WAR THEORY AND PATTISON’S MODERATE INSTRUMENTALIST APPROACH

Armed humanitarian intervention is governed by the same ethical guidelines as any incarnation of warfare, and as a stand-alone theory, the framework offered by Just War Theory offers the most comprehensive method of scrutinizing the morality of war. It originated in ancient times as a secular alternative to “holy war,” but still came to be associated with religion, especially Christianity. Aristotle (384–322 BC) coined the term “just war” and Augustine (354–430 AD) adapted the early concept to make war possible from a religious and moral point of view; he struggled with the purely pacifist dogma of Jesus Christ versus the constant threat of armed attack from outside forces, and concluded that war must be permissible under certain conditions to protect innocent civilians.²²⁸ The conditions have evolved over time, but the criteria are usually classified in three divisions: *jus ad bellum*, the criteria required to justly go to war; *jus in bello*, the conditions under which war should be justly fought; and *jus post bellum*, the conditions under which war should be justly concluded. A table provided by J. Carl Ficarrotta is a useful distillation of the Just War Theory criteria found in the literature:

²²⁸ Orend, *The Morality of War*, 9–13; see also Michael Walzer, “The Triumph of Just War Theory (and the Dangers of Success),” in his *Arguing About War* (New Haven, CT: Yale University Press, 2004), 3.

The Just War Theory		
<i>Jus ad Bellum</i>	<i>Jus in Bello</i>	<i>Jus post Bellum</i>
Right Authority	Discrimination	Right Authority
Just Cause	Right Intention	Just Cause for Termination
Right Intention	Minimize Suffering	Right Intention
Last Resort	Proportionality	Declaration
Declaration	No Means <i>Mala in Se</i>	Discrimination
Proportionality		Proportionality
Probability of Success		
Aim of Peace		

Table 1. Ficarrotta's amalgamation of Just War Theory criteria²²⁹

The theory is largely, though not completely, non-consequentialist. Its hallmark criterion is the principle of just cause; a war is unjust if the cause is unjust, regardless of the consequences. Notable exceptions from Ficarrotta's table are the aim of peace and probability of success criteria; they are consequentialist because they allude directly to the outcome of the intervention, but in a business arrangement between a principal and agent these can be safely assumed to be met. If a principal is engaging a PMC to carry out a humanitarian intervention, his only just aim is peace; for the PMC, assuming that his business model would include success, as will be discussed below.

There is substantial disagreement not only on which criterion fits where, but also what each criterion really means. Ficarrotta considers some examples to demonstrate the ambiguity inherent in the Just War Theory criteria.²³⁰ First, the criterion of just cause could mean many things; it is generally agreed to be self-defense, but of what? A just cause could be the protection of a nation's borders, its population, or its natural resources; another just cause could be carrying out the will of God, same as the justification used by Al-Qaeda. Another example is the criterion of last resort. Emotion and pride often cloud perceptions

²²⁹ J. Carl Ficarrotta, "Just War Theory: Triumphant... and Doing More Harm than Good," in his *Kantian Thinking about Military Ethics*, (Burlington, VT: Ashgate, 2010), 108.

²³⁰ Ficarrotta, "Just War Theory," 109.

of alternatives to war, as the American experience in the 2003 Iraq War showed.²³¹ It is difficult for national leaders to honestly say when all options have been exhausted. A third example is the ambiguity of right authority. As with many things, the concept is relative. A country's leaders will likely reject the authority of an invader, and a rebel leader will certainly reject the authority of the leaders in the government he opposes. In the international community, the UN is often referred to as a legitimate legal body, but their legitimacy is hypothetical; their resolutions are often disregarded and they have no organic enforcement mechanism.²³² These are hardly characteristics of a true authority.

There are also some problems with the theory of just war itself. In fact, Ficarrotta objects to Just War Theory's classification as an actual theory, because that would "[confer] on it a theoretical coherence [he thinks] it simply fails to deliver."²³³ He prefers to call it a framework, and believes that the purpose of the theory (or framework) is to provide a moral justification for war after the fact, and that it effectively serves no other purpose, and in fact makes war more common and morally acceptable.²³⁴ In contrast, Walzer celebrates the "triumph" of Just War Theory, and considers Ficarrotta's objection to the theory's justification of war to be its strength. If it had been easier to "moralize" war in Rwanda in 1994 to stop the massacres, Walzer reasons, then humanity would have won a victory, instead of suffering an overwhelming defeat.²³⁵ This perspective is more convincing, and considering the horrors that humanity continues to visit upon itself, the criminalization of war may be something best reserved for visions of a more peaceful planet in the future.

²³¹ Michael Walzer, "Five on Iraq," in his *Arguing About War* (New Haven, CT: Yale University Press, 2004), 160–161; Walzer claims that the Iraq War was unjust because it was "fought before its time."

²³² Pattinson, *Privatised Peace*, 1.

²³³ Ficarrotta, "Just War Theory," 107.

²³⁴ Ficarrotta, "Just War Theory," 107–118; Ficarrotta advocates the criminalization of war, while acknowledging that organized violence would be necessary to enforce it. At first this seems like a paradox, as if a crime must be committed to enforce the law, but Ficarrotta's argument is more convincing when he points out that to *not* criminalize war legitimizes it *prima facie*. The development of an enforcement mechanism remains a problem, and this thesis seeks to suggest that PMCs could fill that role.

²³⁵ Walzer, "The Triumph of Just War Theory," xi.

Examinations of Just War Theory in a context including PMCs invariably call for a revision of the just war principles.²³⁶ Joseph Runzo hangs on to the principles of discrimination and proportionality, but proposes an added *jus in bello* principle of military professionalism that excludes private forces on the sweeping assumption that PMC employees are not honorable military professionals. He concludes that PMC employees are untrained in just war, among other things, and are therefore unsuitable for neither peacemaking nor peacebuilding, and should be excluded from combat roles.²³⁷ While there is some empirical evidence of weak training standards and hasty hiring practices on the part of PMCs, Runzo's allegation does not reflect reality. Considering the source of the labor pool from which PMCs draw their employees, which is almost exclusively ex-military, it is more likely than not that PMC employees have received training in just war, especially higher echelon officers such as those employed by Military Professional Resources, Incorporated (MPRI) and other PMCs.²³⁸ In Iraq, in spite of scandals, contractors have been portrayed as "highly professional."²³⁹ Furthermore, the study conducted by Franke and Von Boemcken, which uses actual data, concludes that most PMC employees possess characteristics that are similar to their counterparts in uniform.²⁴⁰ Therefore, the contribution of a criterion of military professionalism is trivial. In the following sections, each of the three categories of Just War Theory will be considered to determine which criteria from each category, if any, are non-trivial in the context of PMCs and humanitarian intervention.

²³⁶ Joseph Runzo, "Benevolence, Honourable Soldiers and Private Military Companies: Reformulating Just War Theory," in Andrew Alexander, Deane-Peter Baker and Marina Caparini (editors), *Private Military and Security Companies: Ethics, Policies, and Civil-Military Relations*, 2008, New York: Routledge, 56–69; James Pattison, "Just War Theory and the Privatization of Military Force," *Ethics and International Affairs* (Summer 2008, 22:2), 160; Pattison, *Humanitarian Intervention and the Responsibility to Protect*, 102.

²³⁷ Runzo, "Benevolence, Honourable Soldiers and Private Military Companies," 67–68.

²³⁸ Doug Brooks, "Messiahs or Mercenaries? The Future of International Private Military Services," *International Peacekeeping* 7, no. 4 (2000), 130.

²³⁹ Cancian, "Contractors: The New Element of Military Force Structure," 65; see also "The Private Warrior's Virtue," in Baker, *Just Warriors, Inc.*, 48–65.

²⁴⁰ Franke and Von Boemcken, "Guns for Hire," 725.

1. Jus Ad Bellum

Although PMCs are being proposed as a tool of a principal agent, and thus rightly not involved in the initial decision making process regarding whether to intervene or not intervene, the PMC retains a responsibility to ensure the relevant principles of *jus ad bellum* are met. The notion has been challenged that the entity to authorize the use of force should only be concerned with *jus ad bellum* while the element that fights is only concerned with *jus in bello*;²⁴¹ it follows that it should be with PMCs. Therefore, *jus ad bellum* elements of a theory of ethically justified private intervention will be considered here. These criteria represent the PMCs basic requirement of due diligence before accepting a contract; a “no questions asked” arrangement must not be an option. The criteria presented here are a mix of consequentialist and non-consequentialist principles; as distinct ethical traditions, they will be considered separately.

The fact that any contract for intervention is a business arrangement must be considered, first and foremost. Therefore, the assumption is safe to make that both principal and agent believe that the arrangement is in their best interests. It would likely follow, then, that the two consequentialist criteria of *jus ad bellum*, probability of success and aim of peace, would be met with the drafting of the contract. No profit-driven organization would enter into an arrangement that they did not expect to be successful. If they did, due to some ulterior motive, then the affair would be unjust. It must be assumed that there is an expectation of success based on a reasonably estimated probability generated by both principal and agent. Furthermore, no sensible principal would hire a company that was not expected to be successful. The aim of peace should be similarly assumed in a humanitarian intervention.

Three of the non-consequentialist criteria must also be assumed to be met. Humanitarian intervention is necessarily overt, so a formal declaration of intent may not be necessary, especially in the case of failed states; there may be no entity to which intentions may be declared. The nature of the unique business arrangement proposed here

²⁴¹ James Pattison, “When Is It Right to Fight? Just War Theory and the Individual-Centric Approach,” *Ethical Theory and Moral Practice* 16 (2013), 35.

dictates proportionality. It would not be cost-efficient for a principal to commit more resources than necessary, though the scales will likely tip the other way in the proportionality calculus given the nature of the cause. In other words, given that the moral stakes involved for a humanitarian intervention will be high in the extreme to begin with (if it is a just cause), the potentially high cost of an intervention conducted by a PMC would be easily proportionate. Finally, the principle of last resort is dubious, since there are always alternatives to war, in theory.²⁴² If a principal is negotiating with a PMC, then it should be safely assumed that all other possible avenues of approach have been exhausted. These criteria are not unimportant, however; they are considered preconditions of the business arrangement being considered. If any fail to be met, then the effort would be unjust from the start. This leaves a final three criteria out of the eight presented by Ficarrotta: right authority, just cause, and right intention.²⁴³ These criteria are the most important for the present purpose because they pose the most problems for PMCs; even though the decision to intervene must happen before contact is made with the PMC.

a. Right Authority: Local External Effectiveness

PMCs that are hired as agents of humanitarian intervention derive their authority from the principal that hires them, since they act on behalf of that principal. The PMC has an obligation, however, to ensure that the principal possesses right authority, but not necessarily from a legal institution such as the UNSC.²⁴⁴ In this section, the terms “right authority” and “legitimacy” will be used interchangeably.

As previously discussed, there is a view is that an intervention is not permissible when carried out without authorization from a public authority. This “public authority” is defined as an individual or group, with no higher authority, responsible for

²⁴² Orend, *The Morality of War*, 57

²⁴³ These are the same three requirements for a just war proposed by St. Thomas Aquinas in the 13th century (Avant, *The Market for Force*, 246).

²⁴⁴ As discussed in Chapter II, the legal status of an intervener has little bearing on the morality of an intervention (Pattison, “Humanitarian Intervention and International Law,” 315).

the well-being of a state or other political element.²⁴⁵ However, if that public authority is unable or unwilling to protect the human rights of its citizens, then it ceases to be a legitimate authority and the responsibility to protect the citizens of that state passes to an intervener with the highest degree of effectiveness.

In this view, the non-consequentialist criterion of right authority, which dictates that the intervener have legal authorization, is transformed into a consequentialist notion of a right authority that depends on effectiveness, from which legitimacy follows. As has been shown, the principle of legitimacy is especially problematic for PMCs; the legal status of PMCs in international law is unclear and has long been a subject of debate.²⁴⁶ However, by setting aside the relevance of the intervener's legal status, the moral authority an intervener possesses can be readily assessed by the PMC using the three forms of effectiveness from Pattison's Moderate Instrumentalist Approach: local external effectiveness, global external effectiveness, and internal effectiveness. While these elements of Pattison's approach are useful as a framework to establish legitimacy, they should be considered in a scaled method of establishing legitimacy, where only the first criterion, local external effectiveness, need be satisfied to achieve a sufficient degree of legitimacy.

Local external effectiveness has been previously characterized as the intervener's ability to end the crisis and successfully promote human rights in the area of the intervention. Furthermore, it dictates that the opinions of the affected population be on the side of the intervention.²⁴⁷ If the opinions of the victimized population do not support an intervention using a PMC, then it would be unethical and should not be undertaken, and vice versa. There are many ways to establish the truth of that opinion, such as independent polling or a bona fide request from a representative of an affected group; in short, if the people want it, the legitimacy is likely achieved.

²⁴⁵ Boyle, "Traditional Just War Theory and Humanitarian Intervention," 36–37.

²⁴⁶ Shearer, *Private Armies and Military Intervention*, 10.

²⁴⁷ Pattison, *Humanitarian Intervention and the Responsibility to Protect*, 140.

The two remaining forms of effectiveness, global external effectiveness and internal effectiveness are not unimportant, but they are neither necessary nor sufficient to establish legitimacy, and so they will be considered for future study.²⁴⁸ Two of the remaining elements of Pattison's approach, external and internal *jus in bello*, will be considered in the section on *jus in bello* that follows.

b. Just Cause: Proof of Atrocity

This criterion is simplest to define for PMCs. Moving beyond Walzer's qualification of an intervention, which requires that events "shock the moral conscience of mankind," a principal's just cause must be well established and undisputable, since the burden of proof is on him.²⁴⁹ Furthermore, the intervention must be a righteous response to unjust aggression, in defense of the lives of others. Simply put, it is necessarily a response to physical violence.²⁵⁰ Genocide and other crimes against humanity are atrocities that, when proven, provide a reasonable just cause for intervention.²⁵¹

c. Right Intention

This criterion is often cited as a reason that PMCs are inappropriate for humanitarian intervention: they are motivated by financial gain.²⁵² As argued in Chapter IV, this is not a compelling argument. It also ignores the distinction between motivation and intention; the agent's *motive* is his reason for carrying out the operation, while his *intention* is the goal he wishes to achieve.²⁵³ It is not intrinsically immoral to

²⁴⁸ See Pattison, *Humanitarian Intervention and the Responsibility to Protect*, 129–152; James Pattison, "The Legitimacy of the Military, Private Military and Security Companies, and Just War Theory," *European Journal of Political Theory* 11, no. 2 (2011): 131–154; Baker, *Just Warriors, Inc.*, 161–178.

²⁴⁹ Walzer, *Just and Unjust Wars*, 86.

²⁵⁰ Orend, *The Morality of War*, 32–33.

²⁵¹ The term "genocide" is defined as "acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group." "Crimes against humanity" are defined as acts "committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack" (United Nations, "Rome Statute of the International Criminal Court," 17 July 1998, http://untreaty.un.org/cod/icc/statute/99_corr/cstatute.htm).

²⁵² Cécile Fabre, "In Defence of Mercenarism," 550–553; Pattison, "Outsourcing the Responsibility to Protect," 10–13.

²⁵³ Pattison, "Just War Theory and the Privatization of Military Force," 147.

be a mercenary, or to be employed by a PMC.²⁵⁴ Even if a PMC employee is motivated primarily by the money he earns, he is not very different than his counterparts in uniform, except that he has not rallied to a flag and he is not likely to be ready and willing to die to achieve his objectives.²⁵⁵ Nonetheless, PMCs will strive to achieve what they are paid to achieve, and if their intent is to establish a safe haven for a victimized population or halt the advance of a murderous force carrying out the genocidal orders of a corrupt regime, then the fact that they are being paid to achieve that goal does not make their actions immoral.

So, if the intent of the principal is just, then it follows that the intent of the PMC, as the agent of the principal, is also just. There is a caveat in this relationship, however. The principal must ensure that it is in the best interests of the PMC to achieve his intent. A method to achieve this can be found in the two principles of positivist agency theory: outcome-based contracts and supervision.²⁵⁶ An outcome-based contract with specific objectives and conditions for their achievement is required, as is some type of effective reporting system, such as direct supervision by observers, so that the principal knows what the agent is doing at all times. Furthermore, a system of rewards and penalties should be put into place that ensures that undesirable behavior is punished and the achievement of objectives is rewarded.²⁵⁷ If one considered the circumstances surrounding some of the criminal activities involving PMCs in Iraq, one could probably conclude that the lack of effective controls over those contractors contributed to that activity. Nevertheless, a just intent on the part of the principal is necessary, imposed on the PMC through outcome-based contracts and supervision.

²⁵⁴ Uwe Steinhoff, "Ethics and Mercenaries," in *New Wars and New Soldiers: Military Ethics in the Contemporary World*, ed. Paolo Tripodi and Jessica Wolfendale (Burlington, VT: Ashgate, 2012), 137–141.

²⁵⁵ Deane-Peter Baker, "To Whom Does a Private Military Commander Owe Allegiance?," in *New Wars and New Soldiers: Military Ethics in the Contemporary World*, ed. Paolo Tripodi and Jessica Wolfendale (Burlington, VT: Ashgate, 2012), 181.

²⁵⁶ Kathleen M. Eisenhardt, "Agency Theory: An Assessment and Review," *Academy of Management Review* 14, no. 1 (1989): 59–60.

²⁵⁷ Steven Kerr, "On the Folly of Rewarding A, While Hoping for B," *Academy of Management Executive* 9, no. 1 (1995), 7.

2. Jus In Bello

While it is right to resist physical violence visited upon fellow human beings, resistance should also be subject to restraint.²⁵⁸ Concerning PMCs, *jus in bello* concerns begin when they finally engage in the use of force, and potentially just defensive killing. They also become legitimate targets themselves, placing them in an especially grave moral position as they defend themselves and the people they are paid to defend.

The *jus in bello* principles of right intention, to minimize suffering, and to use no means *mala in se* symbolize the responsible application of violence to which any armed force should adhere, including PMCs. On the other hand, the just war principles of discrimination and proportionality are of special interest to the application of privatized violence; PMCs, as agents of humanitarian intervention, must adhere to stricter versions of those principles.²⁵⁹ These principles make up the external *jus in bello* of Pattison's Moderate Instrumentalist Approach, but will be considered separately here. A final factor, internal *jus in bello*, will be considered as a distinct criterion.

a. Discrimination

The principle of discrimination is probably most important for PMCs. The principle dictates that the PMC must gain and maintain the ability to discriminate between permissible and impermissible targets. Permissible targets should be defined as those "engaged in harming," while impermissible targets are not.²⁶⁰ While this is fairly straightforward, the Doctrine of Double Effect (DDE) enables foresight of civilian casualties which poses a significant problem for PMCs. The DDE specifies at least two potential effects for every action in combat: one good and one bad. For every action against a legitimate target, civilian casualties and collateral damage is inevitable, commensurate with the complexity of the situation. Usually, as long as the action itself is permissible, the bad effects are not intended, the bad effects are not the means by which

²⁵⁸ Walzer, *Just and Unjust Wars*, 21.

²⁵⁹ Pattison, *Humanitarian Intervention and the Responsibility to Protect*, 109.

²⁶⁰ Orend, *The Morality of War*, 107.

the good effects are achieved, and the bad effects do not outweigh the good effect, the action remains permissible.²⁶¹ However, for a PMC, this is not good enough. Indeed, an idealist position may be that when carrying out a humanitarian intervention, there can be no civilian casualties whatsoever. Due to the already morally tenuous position PMCs are in, it could be argued in such a way, but the burden to achieve such a standard would be excessive. Civilian casualties inevitably occur, and the PMC command structure must be prepared to mitigate the negative effects of those casualties, much like modern militaries do, through active engagement of the population through public relations, civil affairs, and the like. Failure to mitigate the effects of collateral damage risks the perception of a violation of the discrimination principle; it also risks losing any local external effectiveness from which the intervention's legitimacy derives.

b. Proportionality

The proportionality criterion prescribes the level of force that is appropriate to the target, at the tactical level.²⁶² While the *jus ad bellum* criterion of proportionality can be accounted for through cost-effectiveness, whereby it is assumed that as a business arrangement, a PMC will not deploy forces beyond what is necessary to counter the threat, this is not necessarily so at the tactical level. PMC employees must understand that it is not permissible to inflict excessive harm on an enemy that poses a less proportionate threat. Employees must be trained in the use of aimed, proportionate fire, and appropriate weapons systems for threat response. To accomplish this, informal training on proportionality is not sufficient; formal policies must be in place that dictate reasonable rules of engagement and prohibit unnecessary suffering.

c. Internal Jus In Bello

This element of Pattison's Moderate Instrumentalist Approach is compelling because it seems to have been formulated with PMCs in mind. It is in two parts, the first is concerned with the sort of soldiers employed to undertake the

²⁶¹ Orend, *The Morality of War*, 115.

²⁶² Orend, *The Morality of War*, 118–119.

intervention; the second provides for appropriate protection for the PMCs own employees.²⁶³ In some historical cases, PMC employees have been trained soldiers from elite units. In more recent cases, out of necessity, PMCs have employed personnel from less prestigious backgrounds.²⁶⁴ This major concern, however, is the use of conscript and child soldiers. While the use of conscripts may not be of concern in a privatized force, the use of child soldiers, especially in places where the practice is generally accepted, is a potential problem. As the demand increases, and the supply of trained, ex-soldiers decreases, there may be a temptation to hire local troops of an unacceptable age. Furthermore, a failure to provide adequate protection for those troops may become a problem as well. As evidenced by the deaths of four Blackwater employees in Fallujah in 2004, a heavy operational tempo and failure to plan could result in PMC employees being sent to places without adequate protection. In this case, the four men were killed and mutilated before friendly forces knew of their presence in the area.²⁶⁵ This was a clear violation of internal *jus in bello* by Blackwater, who failed to provide adequate protection for these employees.

To aid implementation of internal *jus in bello*, oversight by the principal is suggested. While necessity may dictate more austere measures in a conflict, PMC employees should be of appropriate age and background for the job, and they must be provided adequate protection in the form of personal equipment, fire support, and casualty evacuation capabilities. If the treatment of a PMC's own employees is unjust, then the contract to conduct any operation should be considered to be unjust.

3. Jus Post Bellum: Just Transfer of Authority

Regarding the ultimate goal of ending a conflict once and for all, PMCs pose a legitimate problem. The private intervention force proposed here is aimed at *setting the conditions* for peace; it is unlikely that a PMC, as described, would be equipped for a

²⁶³ Pattison, *Humanitarian Intervention and the Responsibility to Protect*, 110–111.

²⁶⁴ Fainaru describes a PMC that “hired former cage fighters, tow-truck operators, qualified AARP members, then handed them weapons and sent them out into Iraq” (Fainaru, *Big Boy Rules*, 62).

²⁶⁵ Dunigan, *Victory for Hire*, 69–71.

long-term peacekeeping operation, and thus could only gain a temporary peace.²⁶⁶ The traditional *jus post bellum* criteria for conflict termination—right authority, just cause for termination, right intention, declaration, discrimination, and proportionality—apply more closely to the principal agent; that is, it is the principal’s responsibility to ensure that these conditions are ultimately met.

However, in the spirit of Colin Powell’s warning to George Bush prior to the invasion of Iraq in 2003: “You break it, you own it,”²⁶⁷ the PMC who breaks a stalemate in a conflict maintains a responsibility to ensure that there is a just transfer of authority to either another agent of the principal or to a public authority, such as the UN. As an intervention force, the PMC would necessarily be in control of the affected region, and understandably untenable situation in a scenario where long-term stability and a return to public order is the goal. Therefore, the PMCs plan must include a single *jus post bellum* criterion for conflict termination: just transfer of authority.

B. A THEORY OF ETHICALLY JUSTIFIED PRIVATE INTERVENTION

“When everything is said and done, troops will only be prepared to risk their lives if they feel, not merely in their brains but in the marrow of their bones, that their cause is just.”²⁶⁸

The seven criteria are presented here in three categories: *jus ad bellum*, *jus in bello*, and *jus post bellum*. These divisions are designed so that ethical issues associated with distinct phases of warfare can be focused on separately.²⁶⁹ However, as a theory of ethically justified private intervention, all seven criteria will be considered together as elements of a contract between a principal and agent. The criteria that make up the theory are summarized in Table 2, including test questions to help determine whether or not the criteria are satisfied:

²⁶⁶ Steinhoff, “Ethics and Mercenaries,” 142.

²⁶⁷ Karen DeYoung, , *Soldier: The Life of Colin Powell* (New York: Knopf, 2006), 402.

²⁶⁸ Martin Van Creveld, *The Transformation of War* (New York: The Free Press, 1991), 190.

²⁶⁹ Orend, *The Morality of War*, 105.

Criterion	Test
Right Authority	Does the intervener possess local external effectiveness: an ability to end the crisis?
Just Cause	Is there proof of crimes against humanity? Is the intervention a response to physical violence?
Right Intention	Is there a humanitarian-based end state?
Discrimination	Does the agent discriminate between permissible and impermissible targets? Are there attempts to mitigate the effects of collateral damage?
Proportionality	Are there formal Rules of Engagement (ROE)? Are employees trained in the use of aimed, proportionate fire, and appropriate weapons systems for threat response?
Internal <i>jus in bello</i>	Is there appropriate protection for the PMCs own employees?
Just Transfer of Authority	After hostilities cease, is there a planned transfer of authority to either another agent of the principal or to a public authority, such as the UN?

Table 2. Summary of the criteria that make up the theory of ethically justified private intervention

Most scholars recommend that prior to the privatization of any military operation a solid system of regulation must be in place.²⁷⁰ Apart from the existing licensing mechanisms, conventions, and codes of conduct already in place, this is unlikely to be feasible. Using this theory as a guideline, ethically justified private intervention is possible. In the case studies that follow, three cases will be analyzed, bearing in mind actual events and using counterfactuals, to test the theory and help refine it further.

²⁷⁰ Schreier and Caparini, "Privatising Security," 134–140; Steinhoff, "Ethics and Mercenaries," 148; Hedahl, "Blood and Blackwaters," 25.

VI. CASE STUDIES

Cases of humanitarian intervention missions carried out solely by private forces are almost nonexistent. In fact, significant cases of tip-of-the-spear intervention of any type by PMCs are rare. Percy suggests that there are only three: Executive Outcomes (EO) in Sierra Leone, Sandline in Papua New Guinea (PNG), and EO in Angola.²⁷¹ The first two of these are used here; the last case, EO in Angola, is not included because the main actors are almost all the same as in the EO in Sierra Leone case and would not provide sufficient variance for a meaningful comparison. Furthermore, the case of EO in Sierra Leone more closely resembles a humanitarian mission, due to the unparalleled savagery demonstrated by the enemy in that conflict. In contrast, the case of Sandline in PNG could not be characterized as a humanitarian mission at all. This case is presented as it occurred, but in the analysis counterfactuals are presented that help refine the conditions under which an ethical intervention could have happened. The final case is concerned with the Rwanda genocide; it is purely humanitarian, and the intervention is purely counterfactual. It is unique in that a PMC was not hired by any entity to intervene, and since it provides the impetus for this thesis in many ways, it is uniquely suited as a case study. The Rwanda case represents the archetypical scenario under which a PMC seems to be most appropriate, and therefore, it will also be used as a thought experiment to help refine the conditions under which an ethical intervention could have happened. To help with the feasibility of the counterfactual, a previously studied PMC will be used as the notional intervention force: EO. As opposed to using the Angola case, the use of EO in a theoretical intervention in Rwanda is meaningful; this PMC had a plan for an intervention and the available assets at the time of the genocide. Furthermore, this case presents an opportunity to consider a unique principal not previously encountered—the altruistic individual with the resources to employ a private army.

The three cases presented here were selected based on: data richness, extreme values on the values of the IVs, large within-case variance on the values of the IVs, the

²⁷¹ Percy, *Mercenaries*, 217.

idea that predictions made by competing theories disagree with the hypothesized outcome, their similarity to current policy issues, the relative similarity of case background conditions, their suitability for comparison with other cases, and their fundamental importance.²⁷² The central hypothesis of the theory of ethically justified private intervention is that under certain conditions, humanitarian intervention carried out by a private force, such as a PMC, is permissible. The IVs in this study are the seven criteria that make up the theory of ethically justified private intervention presented in Chapter V; the SV is the permissibility of the case as an ethical intervention using a PMC. It is not necessary to predict the value of the SV in these cases because it is already known based on the historical outcome. However, as discussed in Chapter I, if the value of an IV is determined to be false, counterfactual conditions will be used to help formulate conditions under which the variable would change to true. A summary of the cases, some selected variables, and the known outcome is presented in Table 3.

Case	Humanitarian?	PMC	Principal	Outcome – Permissible?
Sierra Leone v. RUF ²⁷³	Yes/No	EO	Sierra Leone Government	True
PNG v. BRA ²⁷⁴	No	Sandline	PNG Prime Minister	False
Hutus v. Tutsis	Yes	Hypothetical EO	Hypothetical private individual	Hypothetically True

Table 3. Summary of the cases being studied.

Other prominent cases, such as MPRI in Croatia, Keenie Meanie in Sri Lanka, or any of the companies that were present in Iraq, are important but not suitable for this

²⁷² Van Evera, *Guide to Methods for Students of Political Science*, 77–88.

²⁷³ Revolutionary United Front

²⁷⁴ Bougainville Revolutionary Army

study.²⁷⁵ These companies did not provide direct intervention services; in fact, they could not rightly be classified as PMCs. They would be more appropriately described as PSCs, since their products are dominantly training and security. Blackwater's tasking in Iraq was mainly personal security details (PSDs), to include the individuals involved in the Nisour Square incident in which seventeen people were unjustly killed.²⁷⁶ They were not paid to conduct independent operations against a determined enemy, unlike EO in Sierra Leone and Sandline in PNG, as the following sections will illustrate.

A. THE NEW CORPORATE WARRIORS: EXECUTIVE OUTCOMES IN SIERRA LEONE

The case of the PMC Executive Outcomes (EO) in Sierra Leone is often studied because it is a prototypical case of a re-invigorated form of warfare that had not existed since the 19th century.²⁷⁷ It takes place amid a vicious civil war between a weak, constantly changing Sierra Leonean government and the murderous Revolutionary United Front (RUF), a non-ideological movement with no serious political base and no coherent plan beyond what benefits a criminal with a gun can enjoy.²⁷⁸ Between 1991 and 1996 over 15,000 people were killed and nearly three million displaced as a result of the RUF's activities. By March 1996 only 16 percent of Sierra Leone's health facilities were operational; the humanitarian crisis was exacerbated by the RUF's penchant for randomly killing civilians and chopping off the arms of people or mutilating them in other ways.²⁷⁹ This caused thousands of people to flee to safer areas, except that usually the areas did not stay safe for long. During all this, the Sierra Leone Army (SLA) was ineffective and provided no viable solution. Help from the UK was requested to no avail,

²⁷⁵ For details on MPRI see Shearer, *Private Armies and Military Intervention*, 56–63; on Keenie Meanie see Spicer, *An Unorthodox Soldier*, 48; on PSCs in Iraq see David Isenberg, "The Players," in his *Shadow Force: Private Security Contractors in Iraq* (Westport, CT: Praeger Security International, 2009), 67–104.

²⁷⁶ Dickinson, *Outsourcing War and Peace*, 1.

²⁷⁷ Davis, *Fortune's Warriors*, 146.

²⁷⁸ Lansana Gberie, *A Dirty War in West Africa: The RUF and the Destruction of Sierra Leone* (Bloomington, IN: Indiana University Press, 2005), 12–13.

²⁷⁹ Gberie, *A Dirty War in West Africa*, 5–6.

and pleas for help from the UN were similarly refused.²⁸⁰ Finally, with no other options, the Sierra Leonean President decided to hire EO to help defeat the RUF and restore stability in the country. In the section that follows, the time period between March 1991 and March 1997 will be discussed; these time periods correspond with the RUF's first operation in Sierra Leone and EO's departure following peace accords.²⁸¹

1. Background

In March 1991, Foday Sankoh, the commander of the RUF, made an announcement on the radio that Joseph Momoh, the President of Sierra Leone, should resign within ninety days or face an armed rebellion. By March 23, however, the RUF conducted a raid on two villages and killed thirteen people, including a major in the SLA.²⁸² The civil war had begun and attacks commenced throughout the country after that, with the RUF targeting mainly small villages to acquire plunder and captives. The SLA was so ineffective that there were reports of "informal collaboration" between the two forces.²⁸³ The SLA was not being cared for, however. With every facet of the Sierra Leone bureaucracy rotten to the core with corruption, money meant for the SLA was not making it down to the rank and file, and by April 1992, troops on the front line had not been paid in three months. Fed up, and intending to find out why they had not been paid, a group of junior SLA officers and men went to the capitol to speak to the president. As they entered the State House in Freetown, Momoh believed that a coup was in progress and fled to Guinea. Suddenly this group of young soldiers found themselves in charge of the country, and their 25 year old senior officer, Captain Valentine Strasser, became president and the world's youngest head of state.²⁸⁴

²⁸⁰ Davis, *Fortune's Warriors*, 133–134, 175.

²⁸¹ Barlow, *Executive Outcomes*, 316; Roelf Van Heerden, *Four Ball One Tracer: Commanding Executive Outcomes in Angola and Sierra Leone* (Pinetown, South Africa: 30° South, 2012), 242.

²⁸² Gberie, *A Dirty War in West Africa*, 59.

²⁸³ Gberie, *A Dirty War in West Africa*, 64.

²⁸⁴ Gberie, *A Dirty War in West Africa*, 68–69.

Strasser immediately replaced Momoh's All People's Congress (APC) with his National Provisional Ruling Council (NPRC) as ruling party. Strasser pledged an end to the corruption of the APC, a swift end to the war with the RUF, and civilian elections by the end of the year. However, the corruption continued under the NPRC, and Strasser's calls for the RUF to surrender went unheeded. The RUF believed that the coup was a result of their revolution and demanded a place in the government, which Strasser refused.²⁸⁵ The war, and the slaughter, continued for nearly three more years. Strasser asked for outside help, and Nigeria sent troops but they were confined to Freetown. A massive recruitment campaign was ordered, and the ranks of the army swelled from 5,000 to around 12,000.²⁸⁶ The SLA remained as ineffective as it was under Momoh, however; a fact that was attributed to the low quality of recruits and the lack effective leadership. By December 1994, Strasser sent a request to Boutros Boutros-Ghali, the Secretary-General of the UN at the time, and asked him to use his "good offices to assist in bringing about a peaceful settlement to the rebel war."²⁸⁷ The UN did nothing, and by early 1995, the RUF was threatening the nation's capital. Finally, to break the stalemate between his government and the RUF, Strasser decided to hire some foreign military professionals.

The contract was first awarded to the Ghurka Security Guards (GSG); a PMC based in the UK but composed of mainly Nepalese ex-soldiers. GSG was contracted to train the Sierra Leone Commando Unit (SLCU); to accomplish this, GSG hired a well-respected American commander, Bob MacKenzie, who was a Vietnam veteran and former member of the Rhodesian Special Air Service (SAS). By late January 1995, within weeks of making the agreement with Strasser, GSG deployed around 60 personnel and went to work immediately training the "elite" SLCU. MacKenzie and his Ghurkas soon found themselves in combat, however, due to the sorry state of the SLCU and the immediate need to regain territory. The contract soon ended in tragedy. After some initial

²⁸⁵ Gberie, *A Dirty War in West Africa*, 68–75.

²⁸⁶ Davis, *Fortune's Warriors*, 134.

²⁸⁷ Gberie, *A Dirty War in West Africa*, 90.

successes, GSG suffered from a devastating chance encounter with the RUF that resulted in the deaths of MacKenzie and 19 others.²⁸⁸ Some witnesses later reported that MacKenzie had been mutilated; his body was hung up, impaled with wooden stakes and spun around by children. His heart was cut out and eaten raw by some rebels; some other parts of his body were cooked and eaten, including the flesh on the palms of his hands.²⁸⁹ Within a month, GSG canceled its contract and pulled out of Sierra Leone.

By April 1995, the RUF was massing its forces near Freetown. That same month, EO representatives met with Strasser and agreed on the terms of a contract. EO's chairman, Eeben Barlow, accepted the contract with full knowledge of what had happened to MacKenzie less than two months prior, and that aggressive offensive operations would be required to accomplish the mission in Sierra Leone. By May 5, a 50-man EO advance party deployed to Freetown to begin preparations. Because EO did not possess its own weapons, armor, or artillery, the government of Sierra Leone was required to issue all these items to the EO men. Since many of these things were in a state of disrepair, a significant amount of maintenance and modification of weapons and vehicles was required before operations could commence.²⁹⁰

The EO force that deployed to Sierra Leone in May 1995 was composed of ex-South African Defense Forces (SADF) personnel (mostly serving with the SADF Special Forces), former members of the SADF Reconnaissance Commandoes or Parachute Brigade, former members of the elite 32 Battalion, or former members of the South African *Koevoet*.²⁹¹ To face the RUF, EO deployed around 180 men. They formulated a simple, five-phase plan: Phase 1 was to occupy Freetown, drive back RUF forces that threaten the capital, and establish staging bases in Waterloo (approximately 20 km southeast of Freetown); in Phase 2 key natural resource areas would be seized (Kono

²⁸⁸ Al J. Venter, *War Dog: Fighting Other People's Wars* (Drexel Hill, PA: Casemate, 2008), 446–455; see also Singer, *Corporate Warriors*, 112; and Barlow, *Executive Outcomes*, 319–320.

²⁸⁹ The flesh on the palms of hands is supposedly a delicacy among cannibals (Venter, *War Dog*, 455).

²⁹⁰ Barlow, *Executive Outcomes*, 322–329; 332.

²⁹¹ The *Koevoet* was a South African Police counter-insurgency unit (Shearer, *Private Armies and Military Intervention*, 41).

District diamond and rutile mines) to deprive the rebels of financial resources and recover them for the government; Phase 3 consisted of clearing the eastbound roads towards Liberia; Phase 4's objective was to locate and destroy the RUF headquarters; and finally, in Phase 5, EO forces would conduct search and destroy operations on RUF remnants throughout Sierra Leone.²⁹²

As preparations were being made in Freetown, the RUF continued to inflict pain on the population throughout the countryside. The types of things that were happening were noted later by Barlow:

A woman reported how she had fallen victim to rebel activities in early May 1995. They had first fired into her house, wounding her in the arm, and had then broken down the door. Why her house had been chosen, she didn't know. With her were her husband and two sons, as well as a pregnant woman, her two small children and several young men. The rebels murdered the whole lot within the house except for her and some other women who were taken outside and repeatedly raped. After this some of the women were killed. Her daughter was repeatedly stabbed in the back, shoulder and chest and she died a few hours later. Her story was not an isolated one. Some people have been herded into their homes and burnt alive.²⁹³

In the face of this horror, the people of Sierra Leone recognized that EO was there to help them. Local inhabitants were reported to be "cheering, waving" as the EO force rolled by.²⁹⁴ Combat operations began on June 6, as an EO Mobile Force carried out Phase 1 of their plan: to fix and destroy an RUF position in Waterloo that was threatening Freetown, so that the area could be used as a staging area for EO. This first operation was successful, at the cost of several wounded EO men, including light wounds to the EO Ground Force Commander, Roelf Van Heerden, and more serious wounds to another man who lost his eye, but Freetown was no longer threatened by the RUF.²⁹⁵

²⁹² Van Heerden, *Four Ball One Tracer*, 195.

²⁹³ Barlow, *Executive Outcomes*, 359–360.

²⁹⁴ Van Heerden, *Four Ball One Tracer*, 153.

²⁹⁵ Van Heerden, *Four Ball One Tracer*, 153–163.

After Phase 1 was complete and Freetown secured, the EO Mobile Force was reorganized to seize the town of Koido in the Kono District, the heart of Sierra Leone's most valuable resources. The Mobile Force was composed of eight vehicles and 49 men with helicopter gunship support; they used Shell Roadmaps from a gas station to navigate, and fought their way to Koido in three days.²⁹⁶ After encountering sporadic resistance from the RUF along the road to Koidu, Van Heerden found that the RUF had fled the town as the EO force advanced. He immediately established himself as the town's ombudsman, and began recruiting and training a local security force. With Phase 2 achieved, the EO force in Koidu began aggressive patrols in the area to disrupt RUF activities, while Phases 3, 4 and 5 were swiftly carried out in the south and east.²⁹⁷ The RUF was effectively defeated within three months, and soon afterwards, Sierra Leone held its first elections in 28 years. Shortly before the elections, Strasser was ousted in another coup conducted by his deputy,²⁹⁸ and EO stayed out of it. The elections remained on track and EO remained, continuing to conduct training and operations, until their contract was not renewed 1997 because of international pressure on the newly elected president, Ahmad Kabbah.²⁹⁹

Overall, EO's mission lasted 21 months, and cost the Sierra Leonean government \$35 million, or one-third of its defense budget.³⁰⁰ EO's involvement was widely criticized, which is why Sam Norma, the Sierra Leonean deputy defense minister, said in

²⁹⁶ Van Heerden, *Four Ball One Tracer*, 165–170.

²⁹⁷ Van Heerden, *Four Ball One Tracer*, 172–174; Shearer, *Private Armies and Military Intervention*, 49–51.

²⁹⁸ Strasser was trying to amend the Sierra Leonean constitution so he could run for president. He was only 29 years old, and the constitution required that any presidential candidate be at least 45. For more on what happened to Strasser, who now “spends his days drinking gin by the roadside,” see Janet Otieno, “Valentine Strasser Stripped of All Power Trappings,” *This Is Sierra Leone*, 16 February 2012, <http://www.thisissieraleone.com/valentine-strasser-stripped-of-all-power-trappings/>.

²⁹⁹ The removal of EO was demanded by the RUF commander, Foday Sankoh during the peace negotiations. Furthermore, James Davis states that the International Monetary Fund (IMF) played a role in the non-renewal of EO's contract. Since by that time the IMF was funding the country's rebuilding efforts, austerity measures dictated the removal of the “mercenaries,” which Kabbah reluctantly complied. With EO gone, Kabbah himself was ousted in a coup (Davis, *Fortune's Warriors*, 144–145).

³⁰⁰ In contrast, a 740-man UN force that was scheduled to stay in Sierra Leone for only eight months was budgeted for \$47 million (Shearer, *Private Armies and Military Intervention*, 51).

April 1996, “Our people have died, lost their limbs, lost their eyes and their properties for these elections. If we employ a service to protect our hard-won democracy, why should it be viewed negatively?”³⁰¹

2. Sierra Leone: A Theory of Ethically Justified Private Intervention

Framing this case as a humanitarian intervention is not difficult; the atrocities committed by the RUF are innumerable and the previously discussed numbers of people displaced by the conflict speaks for itself. Of course, there is much more to the story than can be related here. To address the criteria of the theory presented in Chapter V, more details of the case have been retrieved from the literature, and congruence procedures conducted on each criterion to determine the values of each IV. Recalling that the theory requires compliance from both the principal and agent to be successful, all of the criteria in this case have been determined to be true except for two: discrimination and just transfer of authority. At least one extrajudicial killing of a prisoner took place, and although an EO employee did not carry out the killing, it happened in the presence of an EO commander and thus EO was at least partially responsible. There were probably more, but the single known killing is enough evidence to indicate a problem. However, one war crime does not make an entire campaign unjust. It requires justice be done on behalf of the murdered individual. Additionally, the security vacuum that was created by EO's departure in January 1997 directly resulted in another coup against the democratically elected president, Kabbah. What followed was several more years of bloodshed that could have been prevented. In the sections that follow, evidence will be presented to show that the other criteria have been met, and in the cases of the two criteria that were not satisfied, counterfactual scenarios will be presented, as solutions to false results, that demonstrate under what conditions the principles could have been met. In spite of these existing issues, using a scaled approach to the theory, EO's involvement in Sierra Leone could have met the requirements for an ethical intervention.

³⁰¹ Elizabeth Rubin, “Mercenaries,” *Crimes of War*, <http://www.crimesofwar.org/a-z-guide/mercenaries/>.

a. Right Authority

Does the intervener possess local external effectiveness: an ability to halt the crisis?

Recall that in the theory presented in Chapter V, whether a force is effective or not is the sole determinant of right authority. Compared to the SLA, EO demonstrated a much better ability to organize an effective offensive against the RUF. It was actually difficult to distinguish SLA soldiers from RUF rebels, so much so that the word “sobel” was introduced into the lexicon of Sierra Leone as a combination of the words “soldier” and “rebel.” Sobels also carried out random attacks and plundered villages, and as a result the local population was afraid of SLA troops almost as much as the RUF, for fear that they may be sobels. EO was forced to deal with the sobel problem as well, but the stability EO brought to the areas around Koido and elsewhere resulted in a high degree of support from the local population.³⁰²

EO crushed the RUF in a very short time, brought Foday Sankoh to the negotiating table, and facilitated national elections and a peace agreement. EO accomplished in three months what the SLA could not do in four years. From the beginning, locals would line the streets and cheer for EO as they passed by.³⁰³ It is doubtful that they ever did that for the SLA; it is also doubtful that the SLA could have brought the stability that EO achieved during that time. Therefore, with the legitimate government of Sierra Leone as principal,³⁰⁴ the effectiveness that EO demonstrated meets the criteria of right authority, more so than any other actor present.

Result: true.

³⁰² Van Heerden, *Four Ball One Tracer*, 199–203.

³⁰³ Barlow, *Executive Outcomes*, 329.

³⁰⁴ The fact that the Sierra Leone government was a military junta that seized power in a coup is problematic, but civilian elections were a part of the plan that was dependent on EO’s success.

b. Just Cause

Is there proof of crimes against humanity? Is the intervention a response to physical violence?

The RUF had no discernible agenda beyond theft, so there was no organized genocide of any particular group, except for the defenseless. The RUF “robbed and torched villages, and their trademark was hacking people to death or chopping off their hands, feet or genitals. Sometimes they ate them too.”³⁰⁵ These acts unequivocally qualify as crimes against humanity.

In one incident, dubbed “Operation Pay Yourself” by Sankoh, the RUF attacked the outskirts of Koidu just to kill everyone and loot everything they could find.³⁰⁶ There were many other similar operations. Therefore, this ample proof of the RUF’s crimes constituted a just cause for attacking them.

Result: true.

c. Right Intention

Is there a humanitarian-based end state?

EO’s goal in Sierra Leone, as stated by Barlow, was to “give support to a country moving towards democracy.”³⁰⁷ To accomplish this, the stated goal of the operational commander was to destroy the RUF’s ability to continue operations. The RUF’s effect on the country resulted in a humanitarian crisis; stopping them would satisfy the criteria of right intention. EO had other intentions as well that supported a move towards democracy, including setting the example for the people of Sierra Leone by avoiding corrupt practices.³⁰⁸ EO openly opposed the plundering raids they found the

³⁰⁵ Barlow, *Executive Outcomes*, 317.

³⁰⁶ Van Heerden, *Four Ball One Tracer*, 171.

³⁰⁷ David J. Francis, “Mercenary Intervention in Sierra Leone: Providing National Security or International Exploitation?,” *Third World Quarterly* 20, no. 2 (April 1999), 329.

³⁰⁸ Van Heerden, *Four Ball One Tracer*, 203.

SLA to be frequently conducting; this was resisted by some military leaders but EO made their point.³⁰⁹

EO's motives in the conflict are often at issue, and although distinguishable from its intentions, should be addressed here.³¹⁰ While there was a cash arrangement between Strasser and EO, reports of mining concessions being awarded indirectly to EO as future payment are controversial.³¹¹ EO could have been taking advantage of a weak state ruled by a military junta; the legitimacy of weak states has been called into question because of their dubious representation of the people, and the questionable ability of a people to exercise self-determination when their economy is dominated by foreign interests. If the population has only minimal access to revenue generated by the country's natural resources, the presence of that foreign entity may not be in the best interests of the country.³¹² However, the *status quo* was that ordinary citizens had very little access to revenues generated by the country's natural resources; EO would do no damage to that situation. Instead, it provided the opportunity for a departure from that *status quo*.

Even if EO was financially motivated to get involved in the conflict, its intentions could still be plausibly taken to be humanitarian-based: to bring peace to Sierra Leone.

Result: true.

³⁰⁹ Van Heerden, *Four Ball One Tracer*, 200.

³¹⁰ As discussed in Chapter V, an agent's motives are its reasons for acting, while its intentions are the desired end state for the action.

³¹¹ As Strasser had no cash reserves with which to pay EO, Tony Buckingham, the founder of Branch Energy, agreed to fund the operations against the RUF in exchange for the mining concessions (Gberie, *A Dirty War in West Africa*, 93; Elizabeth Rubin, "An Army of One's Own," *Harper's* (February 1997): 47.

³¹² Angela McIntyre and Taya Weiss, "Weak Governments in Search of Strength: Africa's Experience of Mercenaries and Private Military Companies," in *From Mercenaries to Market: The Rise and Regulation of Private Military Companies*, ed. Simon Chesterman and Chia Lehnardt (New York: Oxford University Press, 2007), 80–81.

d. Discrimination

Does the agent discriminate between permissible and impermissible targets? Are there attempts to mitigate the effects of collateral damage?

An account that describes the method used to target RUF camps provides some insight into how EO discriminated permissible and impermissible targets. To locate the camps at night, EO flew Sierra Leone's Mi-24 helicopters at 5,000 feet so they would be difficult to hear. As they flew over the targeted area, EO personnel used Night Vision Goggles (NVGs) to spot the RUF's cooking fires, which were usually organized in such a way that would distinguish them from hunters, farmers, or villagers. Once the positions were marked, EO took advantage of the open-frequency radios the RUF used to intercept their signals and verify their locations. Once verified, EO would call in mortar fire on the locations, and continue to listen to RUF radio traffic to confirm the hits.³¹³ A potential problem with this method is that the RUF frequently traveled with captives as porters or sex slaves. There would be no way for EO to discriminate between captives and rebels using this method. However, excessive restraint due to the presence of captives would defeat EO before it began. Considering the DDE, if these types of attacks still satisfy the criteria that the action itself is permissible, the deaths of captives are not intended, and any collateral killings are not the means by which the RUF operations are disrupted, then the action could still be permissible, even if such deaths were foreseeable. In the theory presented here though, this is not good enough. In an admittedly idealistic position where no killing of civilians is permissible, or else it would defeat the purposes of a humanitarian intervention, EO should have taken precautions that would prevent the deaths of captives, if it were a possibility that could be achieved by any alternative means. This would include restraint from the use of an area fire weapon, such as mortars, in favor of a more risky method, such as a ground assault with a strict ROE and perhaps a kill-criterion that would result in the deaths of only RUF rebels that display deadly intent; assuming captives were not armed.

³¹³ Mann, *Cry Havoc*, 161–162.

EO had a policy of helping the local population when possible. The rationale behind the policy was that if EO could gain the support of the populace, the RUF would lose any support it had.³¹⁴ This involved things such as providing protection for villagers from rebels so that they could hold a soccer match without disturbance.³¹⁵ Simple actions on behalf of the population such as this would probably not help mitigate the effects of the DDE, however. The problem of an army on the offensive atoning for civilian deaths on the battlefield is sensitive and sometimes dealt with in particularly heartless ways; during the Iraq War, for example, the U.S. Department of Defense (DoD) authorized a maximum payment of U.S.\$2500, which Iraqis invariably considered an outrage.³¹⁶ For EO, more precise targeting would be the best method of mitigating collateral damage.

Van Heerden, an EO commander who held the rank of Colonel, casually describes a war crime in his memoir that must be addressed. After an engagement in which four rebels were killed and one captured, the surviving rebel is detained and interrogated. When the prisoner is determined to have no more useful information, he is handed over to Lieutenant Colonel Sena of the SLA, who makes it immediately clear that no prisoners would be kept alive. Van Heerden explains to Sena that EO men could not carry out such an unjustified killing because it would amount to murder; except that incredibly, Van Heerden sends for one of Sena's men to do the job, and the man is summarily executed.³¹⁷ Clearly, Van Heerden's view here is that if he does not pull the trigger, then he is not responsible, but the fact of the matter is that Van Heerden, Sena and everyone else present could rightly be found guilty of a war crime for the extrajudicial killing of a prisoner who posed no further threat.³¹⁸ Other cases of

³¹⁴ This policy had worked well for EO in Angola (Barlow, *Executive Outcomes*, 324); it is unlikely, however, that the RUF enjoyed much support from the population on which it repeatedly visited terror.

³¹⁵ Rubin, "Mercenaries."

³¹⁶ "The Measure of a Life, in Dollars and Cents," *Washington Post*, 18 June 2007, A15.

³¹⁷ Van Heerden, *Four Ball One Tracer*, 179.

³¹⁸ Under the Rome Statute of the International Criminal Court, Article 8, section 2, part a(vi) defines a war crime as "[w]ilfully [*sic*] depriving a prisoner of war or other protected person of the rights of fair and regular trial."

mutilation and extrajudicial killing, while not committed by EO troops, were tolerated with only weak, symbolic protest when committed by SLA troops.³¹⁹

The alleged crime is a war story in a memoir told nearly 20 years later, however. If it did happen, then EO had a major problem if its goal was humanitarian in nature. Van Heerden described the prisoner as “badly malnourished,” and as he posed no more threat, should have been treated with the proper respect and dignity that should be afforded to all human beings. If the criterion of discrimination were to be met in this case, then systems would have to be in place to protect and care for prisoners, regardless of the policies of local “authorities.” Heinous acts by the RUF are no justification for the killing of prisoners. Local partner forces would have to agree to and use the systems of protection and care for their own prisoners; otherwise the goals of the entire campaign would be rendered essentially unjust.

Result: false.

e. Proportionality

Are there formal Rules of Engagement (ROE)? Are employees trained in the use of aimed, proportionate fire, and appropriate weapons systems for threat response?

EO was said to have an established ROE.³²⁰ However, measured responses to threats, as we know them in modern rules of engagement, did not exist; for example, EO troops were told to answer one bullet with 100.³²¹ That may be hyperbole, or something that is perhaps implicitly accepted elsewhere, but it is not usually codified in company policy, formal or not. Regardless of its content, the ROE maintained by EO were informal.

³¹⁹ Van Heerden, *Four Ball One Tracer*, 171, 179.

³²⁰ Larry J. Woods and Timothy R. Reese, *Military Interventions in Sierra Leone: Lessons from a Failed State* (Fort Leavenworth, KS: Combat Studies Institute Press, 2008), 35.

³²¹ Barlow, *Executive Outcomes*, 331.

The weaponry used by EO was supplied by the government of Sierra Leone. Small arms were equivalent to the RUF, including AK-47 assault rifles and RPG-7 grenade launchers. What EO possessed that provided a firepower advantage were several mortar systems, two BMP-2 armored personnel carriers (APCs) armed with 14.5mm KPV machine guns, and two Land Rovers with a 7.62mm PKM machine gun on one and a 12.7mm DShK machine gun on the other. EO also made use of Sierra Leone's Mi-24 helicopter gunship, which provided a key advantage in reconnaissance, close air support, and attack capability. Additionally, three small fixed wing aircraft were available, and EO brought in two Mi-17 helicopters for casualty evacuation and mobility.³²²

This material advantage was necessary to counter the RUF's advantage in numbers. For example, during EO's push to Kono, the lead elements of the Mobile Force detected an RUF ambush, which turned out to be approximately 100 men. With the Mi-24 gunship available, the rebel's positions were strafed with machine gun fire and bombed with 30mm AGS-17 grenades; a certainly justifiable proportion of force when men numbering in the dozens finds themselves against potentially over 100.³²³ Although EO possessed superior firepower, and used it against the RUF, there is no evidence that the proportions used were unjust when friendly troops were threatened.

Result: true.

f. Internal Jus In Bello

Is there appropriate protection for the PMCs own employees?

EO soldiers were treated well. The weaponry and air support they were provided with was more than adequate, and when men were wounded, the treatment they got rivaled that of any modern army. For example, the EO man who lost his eye in the initial offensive to Waterloo was evacuated by air to Freetown, treated by the EO doctor there, and then flown to London via commercial air, with escort, for further treatment.³²⁴

³²² Van Heerden, *Four Ball One Tracer*, 194.

³²³ Van Heerden, *Four Ball One Tracer*, 167.

³²⁴ Venter, *War Dog*, 481.

EO men were recruited largely from disbanded apartheid-era South African combat units, but there is little evidence of racial discrimination. There were many black soldiers in these units, and EO also employed former members of Nelson Mandela's *Umkhonto we Sizwe* guerrilla force, pre-apartheid enemies of the South African government, who were all out of work by 1995.³²⁵ Even outside of combat, the lives of all EO soldiers were carefully protected; when a black EO soldier contracted malaria, a commercial aircraft was chartered from South Africa to Freetown and back at the cost of over U.S.\$100,000. The evacuation saved the soldier's life.³²⁶

No child soldiers or conscripts were used by EO, but the use of child soldiers by both the SLA and RUF was met with disdain, but tacit approval.³²⁷ The cultural acceptance of the practice must have been problematic for EO, but only a long-term solution to the issue would have been viable. Furthermore, there is evidence that among EO's allies, things such as weapons were considered more important and valuable than human beings. The loss of a weapon was considered worse than the loss of a man, because a man could be more easily replaced.³²⁸ While these two examples are a function of the cultural views present in Sierra Leone at the time, they would be inexcusable to an observer attempting to assess an intervener's adherence to the principle of internal *jus in bello*. However, EO's treatment of its own troops is evidence of a satisfactory degree of compliance with the principle.

Result: true.

g. Just Transfer of Authority

After hostilities cease, is there a planned transfer of authority to either another agent of the principal or to a public authority, such as the UN?

³²⁵ Barlow, *Executive Outcomes*, 355.

³²⁶ Mann, *Cry Havoc*, 165.

³²⁷ Van Heerden, *Four Ball One Tracer*, 196.

³²⁸ Van Heerden, *Four Ball One Tracer*, 187.

EO was predictably criticized for its role in Sierra Leone from the beginning; Enrique Ballesteros, the UN Special Rapporteur on mercenarism, said that “[EO] was supposed to have provided Sierra Leone with effective protection and security. Obviously, these claims were nothing but propaganda. The deep-lying problems remained untouched.”³²⁹ There are two problems with this statement. First, the stability that EO provided, however fleeting, was quite real; it was not propaganda. A UN negotiator, Canadian General Ian Douglas said, “EO gave Sierra Leone a sense of stability during this critical time.”³³⁰ Even the leader of the RUF acknowledged that if it had not been for EO, his forces would have taken Freetown.³³¹ Second, it was never a part of EO’s contract to address the deep-lying problems of Sierra Leone; that responsibility remained with the principal. However, therein lays the problem of satisfying the criterion of just transfer of authority.

As will be recalled from the background section of this case study, Phase 5 of EO’s plan was to conduct search and destroy operations on RUF remnants throughout Sierra Leone.³³² There is no evidence of a plan to transfer authority to any other entity. It seems that EO’s plan was to stay in Sierra Leone until the money ran out, which it did, by January 1997. By May 1997, Pademba Road prison in Freetown was broken open by the SLA and a coup against Kabbah’s elected government was conducted by a band of sobels, led by Major Johnny Koroma, who installed himself as the new head of state. Without EO to oppose him, Koroma invited the RUF to the capital, but the civil war did not end.³³³ What followed over the next five years can only be described as pure barbarism.

The stability purchased by EO was squandered. As previously discussed, pressure from the international community, including the IMF, is believed to have forced Kabbah to not renew EO’s contract. This non-renewal is considered to be a critical

³²⁹ Francis, “Mercenary Intervention in Sierra Leone,” 330.

³³⁰ Woods and Reese, *Military Interventions in Sierra Leone*, 35

³³¹ Shearer, *Private Armies and Military Intervention*, 51.

³³² Van Heerden, *Four Ball One Tracer*, 195.

³³³ Gberie, *A Dirty War in West Africa*, 59.

blunder,³³⁴ but it should not be regarded as the agent's blunder. If the principal and agent had a plan to carry out a just transfer of authority, EO would have needed to stay in Sierra Leone for at least three more years, until the United Nations Mission in Sierra Leone (UNAMSIL) could deploy. However, EO is not a welfare organization and cannot do what it is not paid to do. The UNSC authorized the establishment of UNAMSIL on 22 October 1999; troops would not have been deployed until several months after that. UNAMSIL was effective in that it claims to have demobilized over 75,000 fighters,³³⁵ but the timing of its deployment is unfortunate. If it had deployed three years earlier, the deaths that occurred at the hands of the RUF from the time of the coup in May 1997 to UNAMSIL's deployment in early 2000 could have been prevented. That is admittedly speculative, though. What is certain is that EO's untimely departure, without regard for what might happen, directly resulted in the precipitous drop in stability after they left. In this case, a plan for transferring authority to an entity capable of securing the country should have been presented from the outset.

Result: false.

3. Assessment

I spoke to some Sierra Leonean officials at the time and I remember one of them looked at me and he had tears in his eyes and he said, 'Everyone disapproved, but what else were we supposed to do? The international community wasn't helping us, nobody was stepping in to intervene, and we just did what we needed to do to survive, we hired these people and they pushed the rebels back and it worked.'³³⁶

Public support for EO in Sierra Leone during the study period is remarkable. In one tragic yet intriguing example, after the RUF locked 120 villagers into a house and set it on fire, the sole surviving villager, a baby that was pulled out alive the next day was

³³⁴ Francis, "Mercenary Intervention in Sierra Leone," 327.

³³⁵ United Nations, "Sierra Leone - UNAMSIL – Background," <http://www.un.org/en/peacekeeping/missions/past/unamsil/background.html>.

³³⁶ Sarah Percy in an interview with Keri Phillips, "Private Military and Security Companies."

named “Colonel Roelf” after the commander of EO forces in the area.³³⁷ In Kono, villagers prayed for EO in their mosque.³³⁸ They had brought security and stability to a previously lawless area, and enabled a return to normalcy, however temporary, for hundreds of thousands of people.³³⁹ But was EO’s intervention ethical? The criteria and test results of the theory of ethically justified private intervention are presented in Table 4:

Criterion	Result	Counterfactual solution if false
Right Authority	True	n/a
Just Cause	True	n/a
Right Intention	True	n/a
Discrimination	False	Systems for protection and care of prisoners; training and example-setting in law of war for partner forces
Proportionality	True	n/a
Internal <i>jus in bello</i>	True	n/a
Just Transfer of Authority	False	Executed plan for just termination of hostilities; coordination with UN or other entity for transfer of authority

Table 4. Summary of findings, Sierra Leone case study.

The theory of ethically justified private intervention requires compliance from both the principal and agent to be successful; as Table 3 shows, all of the criteria in this case have been met except for two: discrimination and just transfer of authority. The extrajudicial killing of a prisoner rendered a false result for the principle of discrimination, and both the principal’s and agent’s failure to exploit the hard-won stability achieved by EO resulted in a false result for just transfer of authority. In these cases, counterfactual scenarios have been presented as solutions to false results that demonstrate under what conditions the principles could have been met. For the other criteria, evidence has been presented to show that they have been satisfied. Using a scaled

³³⁷ Van Heerden notes the irony and tragedy in that he and his men were not there to save the 119 villagers who were burned to death (Van Heerden, *Four Ball One Tracer*, 193).

³³⁸ Rubin, “An Army of One’s Own,” 46.

³³⁹ William Shawcross, *Deliver Us from Evil: Peacekeepers, Warlords and a World of Endless Conflict* (New York: Simon and Schuster, 2000), 203.

approach to the theory, EO's involvement in Sierra Leone has been determined to meet the requirements for an ethical intervention.

B. THE LAND OF THE UNEXPECTED: PAPUA NEW GUINEA AND THE SANDLINE AFFAIR

The case study that involves PNG and the PMC Sandline International³⁴⁰ takes place in the context of a secessionist rebellion with both economic and cultural origins. It was fought by a group of underdogs with seemingly legitimate grievances, including demands for political self-determination and the right to the benefits derived from natural resources found on their ancestral lands. On one side, the Bougainville Revolutionary Army (BRA) fights for independence from PNG. On the other side, the Papua New Guinea Defense Force (PNGDF) fights to keep Bougainville and its resources part of PNG. By the time Sandline gets involved, the conflict has dragged on for nine years at the cost of an estimated 10,000 lives,³⁴¹ with no end in sight. In the sections that follow, the origins of the Bougainville Rebellion will be briefly traced from its origins to the “Sandline Affair,” during which the frustrated PNG Prime Minister, Julius Chan, approved a plan to break the stalemate on Bougainville by employing Sandline. Although the plan was never carried out, the humanitarian nature of the conflict will be addressed and a counterfactual scenario will be presented in which the plan proposed by Sandline could have been implemented to theoretically break the stalemate and bring relief to the long-suffering population of Bougainville. Central to the case is how Sandline's plan for neutralizing the BRA *could have been* carried out. In order to determine whether it could have been ethically justified, each criterion of the theory of ethically justified private intervention will be discussed using the counterfactual scenario. Since the operation was in reality canceled before it was carried out, the values of all IVs are presumed to be false; therefore, testing each criterion is not necessary. However, an assessment of the

³⁴⁰ Sandline International will be referred to hereafter simply as “Sandline.”

³⁴¹ The death toll was mainly civilians who died for lack of health care (Guy Arnold, *Mercenaries: The Scourge of the Third World* (Basingstoke, UK: Palgrave Macmillan, 1999), 76).

case within the framework of the theory of ethical private intervention is useful and will therefore be presented.

1. Background

The island of Bougainville is nearly a thousand kilometers east of PNG's capital, Port Moresby, and the people there are culturally and ethnically different from the people elsewhere in PNG.³⁴² They also live on top of a huge mass of copper ore that was discovered in 1960. By 1967, a mine was constructed by Bougainville Copper Limited (BCL) to extract the copper. Of course, the landowners should have profited from the mine, but instead of bringing jobs and prosperity to the island the mine brought inevitable conflict, culminating in a bid for independence for Bougainville and a decade-long war. To show how a PMC became involved, the origins of the conflict are presented, along with the performance of the PNGDF, the events that precipitated the employment of Sandline, and Sandline's plan to stop the BRA.

In 1967, PNG was still administered by Australia. The Australian High Court ruled that landowners may own the land, but what lay below the surface of the land belonged to the government.³⁴³ Traditional landholders in Panguna, where BCL built the copper mine, were instantly marginalized. Landowners were paid some royalties from the mine, but very little—0.2 percent of the proceeds.³⁴⁴ In 1975, PNG gained its independence and by 1980 the Panguna Landowners Association (PLA) had formed and began to oppose BCL in Bougainville. By 1988, representatives from the PLA stepped forward and demanded compensation for the damages done to the land. They not only asked for U.S.\$10 billion cash, they demanded 50 percent of all future profits, immediate

³⁴² Roderic Alley, "Ethnosecession in Papua New Guinea: The Bougainville Case," in *Ethnic Conflict and Secessionism in South and Southeast Asia*, ed. Rajat Ganguly and Ian Macduff (Thousand Oaks, CA: Sage Publications, 2003), 226.

³⁴³ The External Territories Minister of Australia, Charles Barnes, summed up a response to the landowner's claims by saying, "[y]ou get nothing" (Sean Dorney, *The Sandline Affair: Politics and Mercenaries and the Bougainville Crisis* (Sydney, Australia: Australian Broadcasting Commission, 1998), 42; see also Alley, "Ethnosecession in Papua New Guinea," 228.

³⁴⁴ Alley, "Ethnosecession in Papua New Guinea," 229.

representation in matters of new construction, and within five years, completely localized ownership of BCL. As expected, BCL refused.³⁴⁵

The move was meant to diminish BCL's standing in the community, but another event in 1988 can be attributed to the start of hostilities. The PLA blamed the Panguna mine for a number of ecological effects on the community, including the extinction of the flying fox, diminishing crop growth, and birth defects in Bougainvillean children. Part of the cause of this was attributed to the mine's pollution of the Jaba River, and the PNG government ordered an environmental study of the river to investigate these claims. The results indicated no toxicity, only an increase in turbidity. When these results were presented, Francis Ona, the General Secretary of the PLA and former truck driver for BCL, was infuriated and walked out of the meeting. Several days later, the explosives storage facility at the mine was broken into and some pylons and equipment at the mine were sabotaged shortly thereafter.³⁴⁶

After about a year of industrial sabotage, the mine closed down. There were attacks on local security forces as well, which provoked a heavy-handed response. In one incident, members of the Royal PNG Constabulary (RPNGC) found and beat the provincial governor and one of his ministers almost to death after several of their comrades had been wounded in a rebel ambush. The minister was blinded in one eye and the governor, Joseph Kabui, was forced to lick blood out of the vehicles in which the wounded RPNGC officers had been transported.³⁴⁷ When the RPNGC expanded its campaign to include burning down villages, Francis Ona formed the BRA and, with the support of Kabui, informed the PNG Prime Minister, "[you] have passed the limits allowed in the international laws of justice and peace...we are going to try to defend ourselves."³⁴⁸

³⁴⁵ Alley, "Ethnosecession in Papua New Guinea," 230.

³⁴⁶ Dorney, *The Sandline Affair*, 40–41; Michael Malik, "Island Insurrection," *Far Eastern Economic Review* 145, no. 31 (3 August 1989): 20.

³⁴⁷ Malik, "Island Insurrection," 22.

³⁴⁸ Kristian Lasslett, "State Crime by Proxy, Australia and the Bougainville Conflict," *British Journal of Criminology* 52 (2012): 708.

As the rebellion gained traction, the fighting intensified. The PNG government declared a state of emergency but stories of atrocities carried out by the PNGDF spread and support for the BRA grew. When the PNG Prime Minister at the time, Sir Rabbie Namaliu, received an independent report of the PNGDF's activities from one of his own staff, he realized that the conflict was not going well. Bougainvilleans were being beaten to death or shot by the dozens without explanation—it appeared to be pure chaos. Namaliu arranged for a cease-fire that was signed by the commanders of both the PNGDF and BRA, but hostilities did not cease.³⁴⁹ In 1990 the Bougainville Interim Government (BIG), with Kabui as its chairman, declared independence from PNG; the PNG government withdrew its troops and followed up with a blockade of the island.³⁵⁰

The PNGDF gradually returned to the island, but the ensuing stalemate and the constant rotations to Bougainville were stressful. There were only two infantry battalions in the PNGDF, with a combined strength of just over 1000 men. The entire PNGDF, including all units, numbered at around 4000, with no armor or artillery.³⁵¹ The constant deployments, harassment by the BRA, low pay, and substandard equipment all took a severe toll. The force was known to be undisciplined and had already rioted in Port Moresby as early as 1989; around 400 soldiers marched on Parliament with grievances over pay, smashed windows, and overturned a police car.³⁵² On Bougainville, the PNGDF routinely brutalized the population to the point that their own commanders could not stop them. In an incident where the PNG Joint Forces Commander, a Colonel, witnessed a group of soldiers beating a civilian and ordered them to stop, a junior PNGDF officer threatened him at gunpoint.³⁵³

Attacks and beatings continued back and forth for several years until 1996, when there was a surge in violence. The new PNG Prime Minister, Sir Julius Chan, had been

³⁴⁹ Dorney, *The Sandline Affair*, 45–46.

³⁵⁰ Alley, "Ethnosecession in Papua New Guinea," 230.

³⁵¹ Dorney, *The Sandline Affair*, 61–63.

³⁵² Dorney, *The Sandline Affair*, 70.

³⁵³ Dorney, *The Sandline Affair*, 75.

working towards a peaceful settlement since taking office in 1994, but they fell apart after an incident following peace talks in Cairns, Australia. Representatives from BIG and BRA, including the BIG Chairman Kabui, attended the talks but as they returned to Bougainville by boat, a PNGDF patrol fired on them.³⁵⁴ Interpreting this as a planned ambush, BRA went back on the offensive and by the end of the month two PNGDF soldiers were dead. PNGDF soldiers retaliated by attacking a village and massacring twelve civilians, including an eight-month old baby. The BRA was accused of targeting civilians as well, perhaps supporters of a pro-PNG resistance movement. In a last-ditch effort to end the conflict once and for all, the PNG Defense Minister, Mathias Ijape, began to look for outside help.³⁵⁵

In the meantime, the BRA killed six members of the PNG security forces near the island of Buka, which was supposedly government-controlled. The BRA sank the security force boat and shot the officers as they treaded water.³⁵⁶ A week later, Chan ordered the lifting of the cease-fire and approved Operation High Speed II, a mission aimed at capturing the BRA leadership in the heart of Bougainville. Chan said in an announcement to the BRA, “[y]our number has been called and you are now facing the full force of the law.”³⁵⁷ As this was happening, Ijape made contact with Tim Spicer of Sandline through an acquaintance in London.³⁵⁸

The PNGDF required helicopters; the Australian government had supplied four U.S.-made Iroquois helicopters but had specified that they were not to be used for offensive operations.³⁵⁹ Australia refused to supply any more, and a deal to purchase ten

³⁵⁴ This “ambush” could have been a case of mistaken identity. Chan claimed that the attack was not intentional and that the BIG and BRA delegation ran into a patrol looking for weapons smugglers (Dorney, *The Sandline Affair*, 103).

³⁵⁵ Dorney, *The Sandline Affair*, 102–104.

³⁵⁶ There were seven officers in the boat; one was also shot but survived (Dorney, *The Sandline Affair*, 106–107).

³⁵⁷ Dorney, *The Sandline Affair*, 109.

³⁵⁸ Dorney, *The Sandline Affair*, 112.

³⁵⁹ The conditions Australia placed on the use of the helicopters were not honored by the PNGDF. One of their commanders told a journalist that the helicopters had been used in 1991 to strafe villages and dump the bodies of BRA suspects in the ocean (Dorney, *The Sandline Affair*, 44–45).

more Iroquois helicopters directly from the U.S. government was disapproved by the U.S. State Department.³⁶⁰ This was likely due to the atrocities that had already been committed on Bougainville by the PNGDF and the probability that the helicopters would be used as gunships to indiscriminately fire on civilians. Reports of torture and murder committed by the PNGDF, including an incident where a Bougainvillean chief was soaked with gasoline and set on fire, were widespread; as were reports that PNGDF dropped grenades on villages from the Iroquois helicopters while other troops used machine guns supported with rope so that they could fire on the villagers.³⁶¹ The United Nations Human Rights Commission (UNHRC) reported at least sixty-four known extrajudicial killings where some of the victims had been cruelly killed by beating or being dragged behind a vehicle.³⁶² The Australian and U.S. governments were concerned; but as requested, Spicer provided the PNGDF with a proposal to provide two Mi-24 helicopter gunships, two Mi-17 transport helicopters, and a fixed-wing aircraft for electronic warfare purposes.³⁶³

The PNGDF Commander, Brigadier General Jerry Singirok, was opposed to the Sandline plan; it was too expensive at U.S.\$30 million anyway, so Operation High Speed II went forward. The mission was a dismal failure—most of the PNGDF troops did not make it past the beach head. Singirok blamed the failure on the loss of the only two remaining Iroquois helicopters, both of which were disabled early in the fighting. The operation was widely covered by both the British Broadcasting Commission (BBC) and the Australian Broadcasting Commission (ABC), and Sandline was monitoring the situation. The day after the PNGDF troops abandoned the beach head on Bougainville, Spicer re-contacted Chan about a possible contract for Sandline.³⁶⁴ This time, Chan was more interested.

³⁶⁰ Dorney, *The Sandline Affair*, 137.

³⁶¹ Lasslett, "State Crime by Proxy," 714, 716.

³⁶² Dorney, *The Sandline Affair*, 128.

³⁶³ Spicer, *An Unorthodox Soldier*, 156–157.

³⁶⁴ Dorney, *The Sandline Affair*, 132–136.

Soon after Operation High Speed II there was a massacre of PNG security forces on Kangu Beach; twelve were killed (some had their penises severed and stuffed in their mouths), and five were captured. Furthermore, the transitional Premier of Bougainville, Theodore Miriung, was assassinated, more PNG soldiers were taken hostage by the BRA, and soon after, PNG soldiers mortared a village and killed nine people.³⁶⁵ Finally, in face of the continuing violence and systematic failure of the PNGDF, Chan approved a plan to engage Sandline.

Spicer presented a new proposal that included the U.S.\$30 million air package plus forty commandos to augment the fledgling PNG Special Forces Unit (SFU) at an additional cost of U.S.\$6 million. Spicer's plan was to train the SFU, who were all already veterans of the conflict, in preparation for ground operations against the BRA. When these operations commenced, the SFU would be accompanied by the forty Sandline "trainers," who would also take on a combatant role. The Mi-24 gunships would provide an attack capability and close air support, while the Mi-17 helicopters would be used for mobility. The electronic warfare assets would be used to intercept BRA radio transmissions and to locate their positions. Spicer also planned a non-lethal psychological aspect using the surveillance equipment, to plant seeds of doubt in the minds of the BRA leadership. He planned to call their satellite phones and notify them of the time and place of an Mi-24 firepower demonstration, so that they could witness the effects of such an attack. He also planned to use loudspeakers on a small plane to broadcast pro-PNG messages to the BRA and the people of Bougainville. In support of all this, the PNGDF

would establish bases on Bougainville out of which Sandline and the SFU would

³⁶⁵ Dorney, *The Sandline Affair*, 140, 151, 156, 159.

operate.³⁶⁶ Their objectives were twofold: neutralize the BRA and take possession of the Panguna mine.³⁶⁷

Soon after the Sandline trainers arrived, the news of their presence broke to the world. Relations soured between Chan and his Australian counterpart, John Howard; international pressure to call it off mounted immediately. Work to train the SFU began, but right away, soldiers of the PNGDF began to resent the amount of money the Sandline trainers were being paid. The PNGDF believed it had been overworked, underpaid, and generally treated poorly by the government for years, so civil-military relations soon became tense. Singirok ordered Spicer and all Sandline employees arrested, then he announced that the contract with Sandline was invalid and called on Chan to resign. When Chan refused, 2000 civilians rioted in Port Moresby. Ten days later, Chan resigned and all of the Sandline employees were deported, except for Spicer, who was kept in PNG to stand before a judicial inquiry.³⁶⁸ The Sandline Mi-24 helicopters never arrived in PNG.³⁶⁹

2. Bougainville: A Theory of Ethical Private Intervention

Framing this case as a humanitarian crisis from the PNG government's perspective is problematic, because it can be argued that they caused it. The blockade on Bougainville, imposed by PNG and supported by the Australian government, included an embargo on humanitarian aid. The resulting lack of medical services led directly to the majority of the civilian deaths related to the conflict.³⁷⁰ Furthermore, the return of the PNGDF in 1991 and the ensuing hostilities necessitated the creation of forty-nine internally displaced persons (IDP) camps to house nearly 70,000 people displaced by

³⁶⁶ Spicer, *An Unorthodox Soldier*, 162–164.

³⁶⁷ Sheppard, "Foot Soldiers of the New World Order," 133.

³⁶⁸ Arnold, *Mercenaries*, 79–84; see also Keith Suter, "Mercenaries, Mines and Mistakes," *World Today* 53, no. 11 (November 1997): 278.

³⁶⁹ Mark Phillips, "Chopper Sale Grounded," *Australian*, 8 December 2003, http://www.sandline.com/hotlinks/Australian_chopper-sale.html.

³⁷⁰ Lasslett, "State Crime by Proxy," 713; Suter, "Mercenaries, Mines and Mistakes," 279; Alley, "Ethnosecession in Papua New Guinea," 231.

either the BRA or the PNGDF.³⁷¹ Combined with the lack of medical care, the humanitarian crisis was severe, regardless of the conduct of each belligerent in the conflict. Theoretically, the end of the conflict would end the blockade and end the humanitarian crisis. In this case, Sandline could have been used with great effect.

Unfortunately, in consideration of the facts of the case as presented in the previous section, not one criteria of the theory of ethical private intervention presented in Chapter V would hold true. While the secessionist demands of the BRA could have been considered a just cause by itself at the beginning, the proximate cause of the conflict can be traced back to the activities of BCL at the Panguna mine. The secessionist demands came about later, after the PNGDF's indiscriminate retaliations for the PLA's sabotage of the mine. Therefore, if the PNG government does not have a just cause, then its agent could not possibly either. Since it is known that there are no true values for the IVs, the SV is consequently false even when a scaled approach is used; it is not necessary to conduct congruence procedures. For the purposes of this thesis, however, in the sections that follow, the reason each criterion is false will be stated, followed by a counterfactual scenario that would, in theory, render a true value for that IV, and subsequently a true value for the SV.

Hence, with the criteria of the theory of ethical intervention in mind, if Sandline's plan had been carried out in reality, it would not have been ethically justified.³⁷² To consider Sandline as a theoretical humanitarian intervention force, however, with the PNG government as the principal, one must simplify the scenario and focus on the humanitarian objective. In the sections that follow, all responsibility for the humanitarian crisis must be counterfactually placed on the BRA. Sandline's objectives must be restricted to the neutralization of the BRA, but their original plan and force package, as presented in the previous section, will be considered to be in place. They would require a

³⁷¹ That is 40 percent of Bougainville's population (Suter, "Mercenaries, Mines and Mistakes," 279; Alley, "Ethnosecession in Papua New Guinea," 231.

³⁷² As discussed in the previous section, the immediate outrage in the international community, and domestically in PNG, is evidence that Sandline's involvement was unethical in the context of the Bougainville rebellion.

humanitarian-based end state, and a plan to hand over authority to an internationally recognized authority. Only under these conditions, and others to be discussed, would Sandline's involvement as a humanitarian intervention force be ethically justified.

Therefore, the analysis presented in the following sections will necessarily rely on two counterfactual premises: that the BRA is solely responsible for the humanitarian crisis on Bougainville, and that the PNG's government's plan to employ Sandline went forward with popular support. These two premises satisfy all four criteria outlined in Chapter I with regard to counterfactuals; first, they build upon the facts of the case as presented. Considering the presence of a pro-PNG Resistance force on the island, it can be assumed that the BRA did not have the full support of the Bougainville islanders. Also, the events that precipitated the arrest of Spicer could have easily been averted with better operational security, and if more effort had been made to cooperate with Singirok as PNGDF Commander. Second, the premises result in a feasible alternative outcome, in that they result in a vigorous offensive operation against the BRA, something that had already happened on several occasions, and would have been in the best interests of the PNG government. Third, the acceptance of these counterfactual premises results in a change in value for all seven IV, each of which remains autonomous. All of the conditions that define each variable will have to be changed to facilitate a true result; a true value for the dependent variable is the goal of this thesis. Finally, for simplicity, the discussion of the effects of the changed conditions that result from the adoption of these premises will be restricted to the seven criteria of the theory of ethical private intervention.

a. Right Authority

Does the intervener possess local external effectiveness: an ability to end the crisis?

Using effectiveness as the main criterion of right authority, over ten years of failure by the PNGDF through four Prime Ministers should be evidence enough that PNG is lacking. Operation High Speed II is a good example of the PNGDF's incompetency; their extreme brutality against the people of Bougainville demonstrates their lack of control.

Counterfactually, it is likely the Sandline plan would have been sufficiently effective to break the stalemate, given the techniques and assets brought to bear. The BRA used psychological operations (PSYOP) through their Radio Free Bougainville program to gain and maintain the support of the people; Sandline had a plan to counter that with electronic warfare assets and PSYOP messages of their own. The same assets would have precisely located the BRA's locations and probably its leadership, since they were known to use unsecure radios. The PNGDF had been using the same tactics of long-range patrolling and cordon-and-search; Spicer's plan would call for an airmobile strike force, composed of its own forty commandos and an equal number of PNG SFU troops, supported by gunships.³⁷³ Thus, Sandline would have solved PNGDF's critical shortcomings in mobility, firepower, intelligence, and command-and-control. Its ability to neutralize the BRA and counter its message to the people would have allowed Sandline to gain control of the situation, broken the stalemate, and restored the authority that its principal required to reach a peaceful settlement.

b. Just Cause

Is there proof of crimes against humanity? Is the intervention a response to physical violence?

Hostilities on Bougainville arguably began when members of the PLA began sabotaging the Panguna mine. Attacks on mining equipment should not qualify as justification for military intervention, much less the use of deadly force. Incredibly, the response of PNG security forces was to burn villages and to indiscriminately kill people.³⁷⁴ Extrajudicial killings by both the BRA and PNGDF were well known and well documented; war crimes took place on both sides.

The squalid conditions in the IDP camps, however, and the treatment of the people there, nearly 40 percent of the island's population, could be considered a just cause for intervention. These so-called "care centers" were known to be sites where

³⁷³ Spicer, *An Unorthodox Soldier*, 156–157.

³⁷⁴ Dorney, *The Sandline Affair*, 44–45; Lasslett, "State Crime by Proxy," 708, 714.

people were routinely tortured, sexually assaulted, or murdered.³⁷⁵ These places could be reasonably characterized as concentration camps. Hence, if the liberation of these camps is added as a secondary objective for Sandline in a counterfactual scenario, and the premise that the BRA was responsible for this is accepted, then the requirement for a just cause would be met.

c. Right Intention

Is there a humanitarian-based end state?

The end state for the PNG government was to seize the Panguna mine and neutralize the BRA. There was no humanitarian aid component anywhere in the plan. Chan did not even have a plan for resolving the root problems of the conflict; Spicer pointed this out while he planned his own operation.³⁷⁶

If the destruction of the BRA led directly to the liberation of the “care centers,” then the PNG-Sandline arrangement would satisfy the criterion of right intention. Note that this is a counterfactual solution; the care centers were run by the PNG government in reality. One may argue that the destruction of the BRA would eliminate the need for the care centers, and this would serve the counterfactual scenario, but the PNG government remains responsible. Nonetheless, if Sandline had the mission of bringing humanitarian relief to the IDPs in the care centers, its motives for doing so would inevitably come into question. As discussed in the previous case, the PMC’s motives should be distinguished from its intentions. The arrangement between Chan and Spicer was always for cash. Associates of Spicer suggested some future investments in the Panguna mine presumably to sweeten the deal,³⁷⁷ but since the mine was never reopened, those investments did not happen. Either way, even if Sandline’s motivations centered on money and investments, if its intentions were to liberate the care centers and end crimes against humanity, this criterion would be satisfied.

³⁷⁵ Lasslett, “State Crime by Proxy,” 714

³⁷⁶ Spicer, *An Unorthodox Soldier*, 163.

³⁷⁷ Dorney, *The Sandline Affair*, 138–139.

d. Discrimination

Does the agent discriminate between permissible and impermissible targets? Are there attempts to mitigate the effects of collateral damage?

Recall from a previous section that one of the PNGDF commanders told a journalist that helicopters had been used to strafe villages and dump the bodies of executed BRA suspects in the sea. It is possible he told a journalist this because it did not occur to him that the indiscriminate killing of civilians or summary execution of enemy combatants was wrong. Shooting unarmed people occurred with depressing regularity on both sides.³⁷⁸

Spicer recognized the need for precision, and if his plan had been carried out, there would have likely been an active effort to discriminate between legitimate and illegitimate targets. In fact, his original plan read, “[t]his operation is highly sensitive and needs to be carried out with...the minimum collateral damage in order to make it acceptable...to world opinion.”³⁷⁹ Sandline’s technological advantage surely would have facilitated this; BRA positions would have been pinpointed through electronic surveillance, and then the SFU would have been inserted to advance for a ground attack. This method is the riskiest, but leads to the least amount of collateral damage, because it allows the individual operator the opportunity to identify his target visually before firing, if necessary.

e. Proportionality

Are there formal Rules of Engagement (ROE)? Are employees trained in the use of aimed, proportionate fire, and appropriate weapons systems for threat response?

The BRA was not well armed; they largely relied on salvaged Japanese weaponry from World War II. Some weapons were home-made, including shotguns

³⁷⁸ Dorney, *The Sandline Affair*, 106–107, 44–45.

³⁷⁹ Dorney, *The Sandline Affair*, 117.

made from water pipe and bows and arrows.³⁸⁰ More sophisticated weapons, such as M-60 machine guns and M-16 rifles, were sometimes captured from the PNGDF.³⁸¹ Each village, however, was restricted to one shotgun for the use of the entire village. Virtually unarmed villagers certainly posed only a nominal threat to the PNGDF as supporters of the BRA, yet they were oftentimes fired upon with mortars or with machine guns from the air.

There is no evidence of a strict ROE for Sandline troops. If the plan had been executed, it should be expected that one would be in place, however. Spicer's vision of the Mi-24 presence was intimidation; there is no indication he intended to use the gunships in attack mode.³⁸² He planned for precision strikes using ground troops using small arms that would close with the enemy. Even a bow and arrow can be used with deadly effect; it would not be unreasonable to expect Sandline troops to respond with rifle fire. Sandline's deadliest weapon would have been the gunships; as long as they were used in response to a threat in kind, the criterion of proportionality would be met.

f. Internal Jus In Bello

Is there appropriate protection for the PMCs own employees?

Sandline personnel were paid very well, but money is not protection, of course, and most people require protection for their families as well. If operations were to be carried out, the Mi-24s would have provided ample protection for troops on the ground, and in the event a man was wounded, Mi-17s would have been available for evacuation. Beyond that, Sandline employees appear to have been on their own. The Sandline contract stated that the agreement would be "terminated upon:—your death."³⁸³ There were no provisions for families of fallen employees beyond one month's salary. In this case, for such dangerous work, it would be appropriate for such arrangements to be

³⁸⁰ The BRA had help from an outsider to build and refurbish these weapons, as will be discussed below.

³⁸¹ Arnold, *Mercenaries*, 76.

³⁸² Spicer, *An Unorthodox Soldier*, 164.

³⁸³ Dorney, *The Sandline Affair*, 176.

made, perhaps a larger death gratuity and an affordable life insurance policy that would provide for the employee's family for the remainder of the life lost in service to the company. Such an arrangement would be ideal, and if a company asks an employee to risk his life, that company should be prepared for him to lose it.

g. Just Transfer of Authority

After hostilities cease, is there a planned transfer of authority to either another agent of the principal or to a public authority, such as the UN?

The PNG government had no plan for what would happen after the BRA was defeated, as previously discussed. Since the conflict is secessionist in nature, the PNG government would want to assume control, but in a humanitarian crisis, a third party would be more appropriate. Even if Sandline was able to break the stalemate and create the conditions for peace, a transition period would be required for continued stability. A third party, such as the UN, would facilitate the rebuilding process and seek to normalize relations between the belligerents. Sandline would not be suitable for this, so a plan to transfer authority to an appropriate agent, such as the UN, would be necessary.

3. Assessment

Admittedly, the situation on Bougainville was much more complex than presented here. Since the Sandline operation never actually happened, many of the conclusions presented here are speculative. However, they have value in that they enable the conditions of an ethically justified intervention to be brought out in the open. In an attempt to frame the conflict within the theory of ethical private intervention, the conditions Sandline would have had to adhere to have been presented as counterfactuals. The results are summarized in Table 5:

Criterion	Counterfactual solution
Right Authority	Sandline's maneuver, firepower intelligence, and control capabilities; PSYOP to aid the support of the population
Just Cause	Crimes against humanity possibly taking place at "care centers"
Right Intention	Liberation of "care centers"
Discrimination	Electronic surveillance to locate targets; ground-based operation for positive identification
Proportionality	Ground operations; restrictions on use of helicopter gunships
Internal <i>jus in bello</i>	Life insurance; family care
Just Transfer of Authority	Executed plan for just termination of hostilities; coordination with UN or other entity for transfer of authority

Table 5. Summary of findings, Bougainville case study

These findings represent a guide that *may* have resulted in an ethically justified private intervention. The theory requires compliance from both the principal and agent to be successful though, and it has been shown that the contributions of the PNGDF would have to be monitored closely. Ultimately, it must be concluded that the intervention proposed by Sandline would not have been ethically justified. However, were the conditions described here implemented, it could have been.

4. Postscript: Harry Baxter, Concerned Citizen of the World

The PNGDF is not the only side in this conflict that had some help. A man named Harry Baxter, an Australian citizen, originally from Ireland, who first went to Bougainville as an employee of BCL at Panguna mine, aided the BRA. After seeing what was happening to the people around the mine, Baxter left Bougainville but eventually returned to help the BRA fight. He did not act as a combatant, however. As an engineer, his talents lay in the repair, design, and fabrication of weapons. He helped the BRA use scavenged materials to build rifles and shotguns out of pieces of pipe, bullets out of ball bearings, and armored vehicles out of abandoned bulldozers. Baxter claims that the weapons were used with great effect, and there is evidence elsewhere that verifies that

claim.³⁸⁴ Fully aware that he could be justifiably targeted by the PNGDF, Baxter continued to help the BRA without pay, and even set up a deal to purchase 350 rifles from an outside source. Ultimately, Baxter and the BRA were unable to close the deal because they could not raise the AU\$350,000 that the rifles cost. If Baxter had been a wealthy man, the BRA would have undoubtedly had those rifles and the tide would have certainly turned against the PNGDF much sooner. Baxter was motivated by the suffering he saw on Bougainville—including the deaths of children from preventable disease he believes is caused by the PNG government.³⁸⁵

In the next case study, the notion of a private individual as the principal in a humanitarian intervention will be explored with the aim of exposing the ethical problems that arise when a person, such as Harry Baxter, chooses to get involved in a conflict after states choose to stay neutral. Baxter is an example of someone who is not motivated by money, national interest, or natural resources; he is simply a concerned individual who believes that there is an injustice, and that it is within his power to do something about it.

C. A THOUGHT EXPERIMENT ON THE EXTERMINATIONS IN RWANDA

The scene presented in the introduction of this thesis, the 1994 genocide in Rwanda, is a compelling situation in which to put the theory of ethically justified private intervention to the test. The case is engulfed in the “holy grail” of just causes—genocide, and is peppered with a long list of actors who did not help, including the UN Security Council (UNSC). The Rwanda case exemplifies a just intervention in which no intervention took place, but that is not to say that no one did anything. There were small victories; one person saved here, six people saved there, but in the end, conservative estimates say that 800,000 people were slaughtered.³⁸⁶ The death toll was a result of the

³⁸⁴ Arnold, *Mercenaries*, 76.

³⁸⁵ Current Affair, A, “Harry Baxter CH9 - A Current Affair Mekamui/Bougainville,” YouTube video, 8:07, from a televised news report, date unknown, posted by “mekamui1,” 5 October 2011, <http://www.youtube.com/watch?v=PHoNTpDtyQM>; Australian Broadcasting Commission, “Harry Baxter ABC 7:30 Report,” YouTube video, 11:16, from a televised news report, date unknown, posted by “mekamui1,” 5 October 2011, <http://www.youtube.com/watch?v=eC5bISo1eNQ>.

³⁸⁶ *Ghosts of Rwanda*, PBS Frontline, Alexandria, VA: PBS Home Video (2005); several interviewees (Laura Lane, Phillipe Gaillard, Carl Wilkens) mention small numbers of people being saved.

Hutu majority's aim to wipe out the Tutsi minority, and the killing was especially vicious. Many were killed with farming tools or primitive weapons. Women were speared from their vagina through their skulls; one elderly woman bled to death after having her legs hacked off; a baby was thrown into a latrine to suffocate. Their bodies were left to rot where they fell; the attackers threatened to kill anyone who dared to give the victims a decent burial.³⁸⁷ The commander of the UN troops in Rwanda, General Roméo Dallaire, did what he could to stop the killing with what he had, but to no avail.³⁸⁸ No additional troops were sent to Rwanda to intervene. Since then, many scholars have considered what would have happened if an intervention force had been deployed to stop the genocide. Alan Kuperman's counterfactual analysis of the effectiveness of a U.S. intervention finds that a force of 5,000 troops deployed after the killing started could not have stopped the genocide altogether, but up to 100,000 lives could have been saved.³⁸⁹ However, a U.S. intervention was extremely unlikely due to the incident in Somalia only six months earlier where 18 Americans had been killed.³⁹⁰ Since there was no state principal willing to sponsor the action, and no public force available to carry out the intervention, the ethics of a privately funded, privately executed intervention in Rwanda will be considered in this section. First, the background of the conflict between the Hutus and Tutsis will be presented. Second, the counterfactual premises of private principal and private agent will be discussed; and finally, an analysis of the scenario will be presented within the framework of the theory of ethically justified private intervention. While the results follow Kuperman's conclusions that the genocide probably could not have been averted as a result of the PMC's deployment, it is likely that a private intervention would have been ethically justified under certain conditions, and could have saved tens of thousands of lives.

³⁸⁷ Des Forges, *Leave None to Tell the Story*, 216, 219.

³⁸⁸ Dallaire requested more troops, negotiated with the opposing forces, and signed a new set of rules of engagement to permit his troops to fire warning shots and to forcibly disarm belligerents (Dallaire, *Shake Hands with the Devil*, 284–290).

³⁸⁹ Alan Kuperman, *Limits of Humanitarian Intervention: Genocide in Rwanda* (Washington, DC: Brookings Institution Press, 2001), 76.

³⁹⁰ The Battle of Mogadishu, which occurred on 3–4 October 1993, is believed to have resulted in the release of Presidential Directive Decision 25 (PDD-25), which limited U.S. participation in peacekeeping operations to those that would be vital to U.S. interests. Although PDD-25 was not released until May 1994, its principles are believed to have guided the policy of non-intervention in the Rwanda crisis (Cohen, *One Hundred Days of Silence*, 51–52, 100–101).

1. Background

The Tutsis migrated to the region that is now Rwanda and Burundi in the 14th century and subjected the native Hutus to their rule. For over five centuries the two ethnic groups maintained a mutually acceptable symbiotic relationship, whereby the Tutsis provided government, and the Hutus provided labor.³⁹¹ There was no apparent hatred between the two groups until the colonial period, when Rwanda became part of the German Empire in 1890. During that time, the differences between the two groups became more pronounced as their colonial rulers restricted key political and military positions to Tutsis, a decision that instantly marginalized the Hutu majority. After World War I, the German Empire was divided up and Belgium became the administrator of Rwanda. The Belgians continued to show favoritism to the Tutsis, who in turn enriched themselves at the expense of Hutus. Eventually, there was a commonly held belief among both European and Rwandan society that Tutsis were the superior race, based on historical “tales” of the migration and domination of northern tribes told to the Europeans by some crafty Tutsis.³⁹² The Europeans believed it, and so did the Hutus. However, the fiction of Tutsi superiority did not last.

As the colonial era waned in the 1950s, the Belgians began allowing more Hutus into schools, and appointed some more to positions in the political administration. Independence was imminent for Rwanda, and both ethnic groups made plans to seize power when the day came. Two political parties formed, the exclusively Hutu *Parti du Mouvement de l'Emancipation des Bahutu* (PARMEHUTU), and the Tutsi *Union Nationale Rwandaise* (UNAR). By 1959, the “Hutu Revolution” began when a Hutu sub-chief was assaulted by a group of Tutsis. A mob of Hutus responded and violent attacks on both groups ensued; several hundred people were killed before the Belgians stepped in. The Belgians stopped the violence, and presumably in an effort to prevent further

³⁹¹ There is a third ethnic group, the Twa, who are distinguishable from the Hutus and Tutsi, but only comprise one percent of Rwanda’s population. The significance of their role in Rwandan society is negligible, so it will not be discussed here (Des Forges, *Leave None to Tell the Story*, 33–34).

³⁹² Patrick O’Halloran, *Humanitarian Intervention and the Genocide in Rwanda* (London: Research Institute for the Study of Conflict and Terrorism, 1995), 2–3; Des Forges, *Leave None to Tell the Story*, 34–38.

unrest, increased the number of Hutu appointments to local administrative positions. Unfortunately, that move only served to fuel the fire, and when the first Rwandan elections were held in 1961, PARMEHUTU took decisive control.³⁹³ One year later, Rwanda was independent.

Tutsis were viciously oppressed in the years that followed, and an estimated 20,000 were killed while more than 160,000 were internally displaced or fled to Burundi, Uganda, or the Democratic Republic of the Congo (DRC).³⁹⁴ Bertrand Russell called the retaliations against Tutsis “the most horrible and systematic human massacre we have had occasion to witness since the extermination of the Jews by the Nazis.”³⁹⁵ The persecution of Tutsis peaked by 1964, however, and in 1973 PARMEHUTU was abolished by a Hutu military coup led by Major General Juvenal Habyarimana. Although the coup was a result of infighting among Hutus, Habyarimana promised to restore Rwandan national unity. To accomplish this, he re-established Rwanda as a single-party state under the *Mouvement Révolutionnaire National pour le Développement* (MRND), making every Rwandan automatically a member of the party.³⁹⁶ Relations between Hutus and Tutsis became relatively normal after that, except that now it was the Tutsis who were excluded from public office or state employment, including the military.³⁹⁷

By 1990, the Rwandan Patriotic Front (RPF), a rebel army formed from the descendants of Tutsis who had fled Rwanda in the early 1960s, staged their first assault on Rwanda’s capital, Kigali, in an effort to seize power. They had been living in refugee camps in Uganda for an entire generation; most of them had been in the Ugandan army and had fought on behalf of the Ugandan President Yoweri Museveni. Negotiations with Habyarimana’s government for the repatriation of the Rwandan refugees had begun, but

³⁹³ Des Forges, *Leave None to Tell the Story*, 38–39.

³⁹⁴ DRC is referred to as “Zaire” in literature contemporary to the event. Its modern name is used here for clarity.

³⁹⁵ Quoted in O’Halloran, *Humanitarian Intervention and the Genocide in Rwanda*, 3.

³⁹⁶ O’Halloran, *Humanitarian Intervention and the Genocide in Rwanda*, 3; Des Forges, *Leave None to Tell the Story*, 40–41.

³⁹⁷ Helen M. Hintjens, “Explaining the 1994 Genocide in Rwanda,” *Journal of Modern African Studies* 37, no. 2 (1999): 256–257.

the RPF decided to enter Rwanda by force to not only facilitate the return of the refugees, but also to depose Habyarimana and install a more democratic government.³⁹⁸ A combined Rwandan and DRC force with French and Belgian support repelled the attack; French forces blocked a second assault fifteen months later.³⁹⁹

The threat from the RPF galvanized Hutu extremists in the Habyarimana government and frightened ordinary Rwandan citizens, who remembered the reprisal killings that had occurred in the past against both Tutsi and Hutu.⁴⁰⁰ Rwandan government spending shifted towards militarization, and funds previously earmarked for food and medicine imports were used to purchase arms. The *Forces Armées Rwandaises* (FAR) was boosted from 7,000 troops to 30,000; civilian militias (*Interhamwe*) were organized to fight the RPF.⁴⁰¹ In spite of all the preparations, however, a peace treaty between Habyarimana and the RPF was signed in August 1993, mediated by the Organization of African Unity (OAU) in Arusha, Tanzania. The Arusha Accords included a plan for power-sharing in the government, the formation of a Council of Ministers in which Habyarimana's MRND party would only have five of nineteen seats, and the integration of the RPF into the FAR. Radical Hutus opposed it from the start.⁴⁰²

The Arusha Accords also called for a UN peacekeeping force to be deployed to Rwanda, and after some deliberation, the UNSC authorized the UN Assistance Mission in Rwanda (UNAMIR), commanded by Canadian General Roméo Dallaire.⁴⁰³ UNAMIR's mandate included passive observation and reporting on the implementation of the Arusha Accords, but when Dallaire drafted his ROE for the mission, he anticipated UNAMIR's responsibility to act in the event that crimes against humanity occur. Part of his "Force Commander's Directive No. 2" reads:

³⁹⁸ Des Forges, *Leave None to Tell the Story*, 48.

³⁹⁹ O'Halloran, *Humanitarian Intervention and the Genocide in Rwanda*, 4.

⁴⁰⁰ Des Forges, *Leave None to Tell the Story*, 65.

⁴⁰¹ Hintjens, "Explaining the 1994 Genocide in Rwanda," 258.

⁴⁰² Des Forges, *Leave None to Tell the Story*, 124–126.

⁴⁰³ Des Forges, *Leave None to Tell the Story*, 131–132.

There may also be ethnically or politically motivated criminal acts committed during this mandate which will morally and legally require UNAMIR to use all available means to halt them. Examples are executions, attacks on displaced persons or refugees, ethnic riots, attacks on demobilized soldiers, etc. During such occasions UNAMIR military personnel will follow the [ROE] outlined in this directive, in support of UNCIVPOL and local authorities or *in their absence, UNAMIR will take the necessary action to prevent any crime against humanity.*⁴⁰⁴

Dallaire submitted this directive to UN Headquarters for approval but received no reply. Only two countries objected to the wording in the ROE, Belgium and Canada, so after some minor changes it was accepted, and was in effect for the remainder of UNAMIR's mission.⁴⁰⁵

The same month that the UNSC approved UNAMIR, the Hutu President of neighboring Burundi was murdered by Tutsi army officers in a coup attempt. Massacres of both Tutsis and Hutus followed all over Burundi, and tensions in Rwanda were pushed to a boiling point. Grievances about ground lost in the Arusha Accords were exacerbated and the Hutu Power movement was formed to unify all of the Hutu groups. Cooperation with the RPF was condemned, as were moderate Hutus who were perceived to oppose Hutu solidarity, and the seeds of genocide were sown.⁴⁰⁶ By March 1994, the leadership of Hutu Power, including Colonel Théoniste Bagosura, the Deputy Minister of Defense, had a plan in place to murder every Tutsi and moderate Hutu in Rwanda. Large numbers of machetes were imported to arm the *Interhamwe* (rifles were too expensive), and lists of names were prepared so that the condemned could be quickly identified to speed the killings.⁴⁰⁷

On 6 April, President Habyarimana was killed along with the new President of Burundi, Cyprien Ntaryamira, when the plane they were traveling in was shot down near

⁴⁰⁴ Des Forges, *Leave None to Tell the Story*, 133; emphasis added by Des Forges; "ROE" is corrected from "ROD," which Des Forges notes is a typographical error in the original document; UNCIVPOL is the UN police unit.

⁴⁰⁵ Dallaire, *Shake Hands with the Devil*, 99.

⁴⁰⁶ Des Forges, *Leave None to Tell the Story*, 134–138.

⁴⁰⁷ Des Forges, *Leave None to Tell the Story*, 5.

the Kigali airport. Habyarimana had been in Dar es Salaam, where it is believed he had finally agreed to the implementation of the broad-based transitional government specified in the Arusha Accords.⁴⁰⁸ Seizing the opportunity, Bagosora put his sinister plan in motion immediately. First, Hutu opposition officials in the government were rounded up and killed by the Presidential Guard, to create the vacuum needed for Bagosora to take control. Next, soldiers and *Interhamwe* were called upon to begin systematically slaughtering Tutsis in the capital, while soldiers dispersed throughout the country were called upon to do the same.⁴⁰⁹ By the next day, Prime Minister Agathe Uwilingiyimana, a moderate Hutu, had been brutally violated and murdered by Rwandan soldiers along with the ten Belgian peacekeepers who were sent to protect her. The *Radio Télévision Libre des Mille Collines* (RTL) began broadcasting encouragement to the killers, including the names of Tutsis who were marked for death. By 11 April, more than 20,000 Rwandans had been killed, and the slaughter was just getting started.⁴¹⁰ By 21 April, and estimated 250,000 had been killed.⁴¹¹

As the genocide unfolded, Dallaire frantically requested more troops and assets, but his requests fell on deaf ears. The shock of moral conscience evoked by the genocide must have penetrated the minds of many world leaders as the days and weeks passed—but no one ever came to help.

2. Rwanda: A Theory of Ethically Justified Private Intervention

On 12 April 1994, the chairman of the PMC Executive Outcomes (EO), Eeben Barlow, received a phone call from a UN representative asking if a private force could be mustered in time to stop the genocide in Rwanda. Within 24 hours, Barlow and his associates conducted a cost estimate of intervention in the Rwandan crisis, including the proposed task organization and concept of operation. The company believed that it would

⁴⁰⁸ Des Forges, *Leave None to Tell the Story*, 181; who actually shot down the plane has never been determined.

⁴⁰⁹ Des Forges, *Leave None to Tell the Story*, 6.

⁴¹⁰ Des Forges, *Leave None to Tell the Story*, 189–191, 201.

⁴¹¹ Kuperman, *Limits of Humanitarian Intervention*, 16.

be able to put armed troops in the country within 14 days, and have follow-on forces in country, including aircraft and artillery support elements, within six weeks—up to 1500 deployed personnel. Its plan was to establish “security islands,” that would provide safe areas for refugees and staging bases for humanitarian relief.⁴¹² The plan would be carried out in four phases:

Phase 1: Operational planning and preparation (two weeks)

Phase 2: Mobilization and deployment (six weeks)

Phase 3: Execution of the mission to stabilize the country (six months)

Phase 4: Demobilization and handover to a UN-approved force

EO estimated that the six-month plan would cost \$100 million—it was rejected 24 hours later because of the cost.⁴¹³ However, if the UN could not afford to pay for EO’s services, what if someone else could? In the sections that follow, an analysis of the morality of EO’s proposed mission in Rwanda will be considered using two counterfactual premises. The first premise is that EO was hired to do the job. The second premise is that EO was hired by a private individual who had access to the particulars of the tragedy as they were reported, and the resources to do something about it. With both a private principal and a private agent, the dynamic of humanitarian intervention changes, as will be discussed. In the end, it becomes apparent that under extraordinary circumstances, a private individual funding a private intervention force would be permissible.

a. Right Authority

Does the intervener possess local external effectiveness: an ability to end the crisis?

In purely moral terms, and for the purposes of this discussion, the intervener’s effectiveness in stopping the genocide will have to be the sole determinant

⁴¹² Singer, *Corporate Warriors*, 185.

⁴¹³ Barlow, *Executive Outcomes*, 441; Singer quotes a \$150 million price tag for the operation (Singer, *Corporate Warriors*, 185), but since Barlow was directly associated with the company, his cost estimate will be used here.

of right authority.⁴¹⁴ In the case of Rwanda in 1994, where the staggering speed of the killing is of prime importance, the benefit of hindsight allows a more thorough and accurate estimate of an intervention force's potential effectiveness. Since EO was based out of South Africa, its forces would have been able to deploy much faster than public forces based in the U.S. or Europe. A flight time of about 3.5 hours from Pretoria to Kigali would have allowed for a quick turnaround for cargo planes. Since Barlow was notified on 12 April, and assuming the principal heard EO's plan within 24 hours and agreed to payment within another 24 hours, it is safe to assume that EO staff could have begun Phase 1 no later than 14 April. Therefore, by their own estimations, EO could have had a vanguard in Rwanda no later than 28 April and its main body in country by the end of May.

By the end of April, however, all of the large massacres of Tutsi had already been carried out. The RPF began making announcements through their political officers and on the RPF radio station that "the genocide is almost completed."⁴¹⁵ Kuperman suggests that by the end of April, an estimated 300,000 Tutsis out of a total population of 650,000 remained alive. Since 150,000 Tutsis survived the slaughter, there were about 150,000 left to be saved. If the genocide lasted one hundred days, or through mid-July, perhaps 75,000 of the doomed Tutsis would have been left by the end of May, all in unknown locations.⁴¹⁶

If the EO force package included only two Mi-17 transport helicopters and two Mi-24 gunships, as it did in Sierra Leone a year later, it would have been extremely time-consuming to cover Rwanda's 10,000 square miles of territory and 600 miles of paved roads. Kuperman estimates that using ten helicopters and a search radius of one mile, the entire country could have been searched in seven hours, and using five helicopters kept aloft continuously—which would require a fleet of twenty helicopters—the roadways could

⁴¹⁴ A wealthy person hiring a private army to battle a national army on its own turf would certainly be illegal under international law, but as discussed in Chapter II, that has nothing to do with its morality.

⁴¹⁵ Kuperman, *Limits of Humanitarian Intervention*, 19.

⁴¹⁶ Kuperman, *Limits of Humanitarian Intervention*, 77.

be patrolled hourly.⁴¹⁷ In short, to effectively cover the entire territory of Rwanda, EO would most likely need twenty helicopters, first to be used for reconnaissance, and second for mobility and observation. Gunships could be used initially to disperse roadblocks, and to provide close air support in the event of any engagement with the *Interhamwe* or FAR still in the process of carrying out mass killings.

This is not to say that EO should have refrained from deploying with what it had, however. Alison Des Forges believes that the violence was highly centralized, and if a foreign force were to seize and hold Kigali, then the government would have been seen as illegitimate in the eyes of the people. She claims that stopping the killing in Kigali would have stopped the killing in the countryside.⁴¹⁸ However, if the genocide was almost complete by the end of April, most, if not all, Tutsi in the capital would have been gone. Alternatively, if EO could have located the largest remaining pocket of Tutsis, established a safe haven, and used its air assets to relocate smaller groups of Tutsis or establish a series of safe havens guarded by heavily armed, African EO troops, then thousands of lives could have been saved. Kuperman estimates that 150 troops could secure 10,000 refugees.⁴¹⁹ Assuming that is feasible, an EO force of 1500 men would have been sufficient to secure the estimated 75,000 Tutsi that remained. Furthermore, the principal must have access to sufficient resources to enable the extension of the mission if necessary. It would not have to be open-ended, but there must be a plan to stay longer than anticipated.

Therefore, if the agent possesses the will and the ability to deploy to a conflict zone and the end result is any number of lives saved, and the principal has sufficient financial resources, then together they satisfy the criterion of effectiveness by ending the crisis for some people, and they possess right authority. The limited scope of the mission should not be relevant to its overall effectiveness, especially if it serves as a

⁴¹⁷ Kuperman, *Limits of Humanitarian Intervention*, 69, 75.

⁴¹⁸ Des Forges, *Leave None to Tell the Story*, 21.

⁴¹⁹ Kuperman, *Limits of Humanitarian Intervention*, 69.

model for other organizations to act as well. In the end, the people whose lives are being saved will not question the identity of who is saving them or who is paying for it.

b. Just Cause

Is there proof of crimes against humanity? Is the intervention a response to physical violence?

By 12 April, given the scope of the killings, it can be safely assumed that the principal would have been able to make a case for crimes against humanity. The fact that Barlow received a call on that day indicates that all possible avenues of intervention were being explored. In fact, as early as 9 April, the *New York Times* ran an article that reported mass killings as a result of the assassination of President Habyarimana.⁴²⁰ By 22 April, the *Los Angeles Times* reported the deaths of 100,000 people in Rwanda, the same day the *New York Times* reported that the UNSC planned to cut the UN peacekeeping force there.⁴²¹ Indeed, there would have been ample proof of the genocide in the media or through the International Committee of the Red Cross (ICRC), but if an individual had designs on funding an intervention himself, first-hand knowledge of the crisis would be necessary, especially considering how fast events unfolded. Therefore, the best case scenario is that the principal would be located in Rwanda with the ability to personally witness the carnage. If that is not possible, however, an agent of the principal with proof of the genocide would be sufficient.

A private intervener should also be required to prove that no international or state-sponsored intervention is imminent. To accomplish this, the principal would have to be intimately acquainted with any UN mission already on the ground. In this case, it would have been apparent by 21 April, when the UNSC approved Resolution 912 which reduced UNAMIR's strength from 2,548 to 270.⁴²² Ideally, a private intervention would

⁴²⁰ Jerry Gray, "2 Nations Joined by Common History of Genocide," *New York Times*, 9 April 1994, 6.

⁴²¹ "Rwanda Death Toll Put at 100,000," *Los Angeles Times*, 22 April 1994 (the previously quoted figure of 250,000 by Kuperman is probably more accurate); "News Summary," *New York Times*, 22 April 1994.

⁴²² "UNAMIR," *UN.org*, <http://www.un.org/en/peacekeeping/missions/past/unamirS.htm>.

sync with any UN mission on the ground to provide assets and capabilities that the UN mission lacked. In the Rwanda case, Dallaire became so desperate for support that he would have welcomed any assistance.⁴²³

c. Right Intention

Is there a humanitarian-based end state?

EO's plan would be to establish safe havens expressly for the protection of civilians; the principal's plan, however, would be subject to more scrutiny. The humanitarian intent of the mission being granted, in the event of a privately funded intervention, every stakeholder would ask: why would this person spend so many millions of his own money to save these people? His motivations for doing so, unlike the motivations of the PMC, would be rightly questioned. As previously discussed, the financial motivations of PMC personnel are morally acceptable. However, in the principal's case, *motivation* must be synonymous with *intent*. This serves to prevent post-intervention exploitation of the affected population in terms of national wealth, including natural resources. The principal must have no designs on profiting from the intervention; his motivations must be purely altruistic.

If those conditions are granted, therefore, a private intervention can satisfy the principle of right intention.

d. Discrimination

Does the agent discriminate between permissible and impermissible targets? Are there attempts to mitigate collateral damage?

Because most of the perpetrators of the violence were civilians, as were the victims, legitimate targets would necessarily have to be caught in the act, or identified as having hostile intent. Furthermore, even though the FAR directly participated in the genocide, they could not be considered legitimate targets except when hostile intent is

⁴²³ Dallaire allegedly "descended into suicidal depression" after the genocide due to his inability to stop it (Anonymous, "UN Exploits Rwanda Genocide," *New American*, 19 April 2004: 8).

observed. In this case, it could be argued that they are the armed forces of a sovereign nation and that it is not permissible to attack them, but as argued in Chapter II, a state that sponsors crimes against humanity has failed its responsibility to protect its citizens, which voids its sovereignty. Therefore, only if they are engaging in crimes against humanity, forces of both the *Interhamwe* and FAR would justly be subject to attack.

e. Proportionality

Are there formal Rules of Engagement (ROE)? Are employees trained in the use of aimed, proportionate fire, and appropriate weapons systems for threat response?

This criterion should not be assumed to be true. As previously mentioned, PMCs do not do anything they are not paid to do; in this case, the principal would play a key role in the implementation of this criterion. An approved ROE would have to be presented to the principal as part of the battle plan, and aspects of the contract that penalize violations of the ROE would have to be included, following the doctrine of positivist agency theory discussed in Chapter V.

f. Internal Jus In Bello

Is there appropriate protection for the PMCs own employees?

As in the previous case, employees would have to be provided with adequate protection for both themselves and their families. The Rwandan mission could be devastatingly dangerous, and as previously discussed, if an employer asks an employee to accept risks, the employer must be prepared to deal with the consequences of those risks.

However, if it is granted that EO and the RPF had mutually supporting missions, then EO would have to be vigilant against the use of child soldiers. The RPF was known to use adolescents in combat roles,⁴²⁴ and adherence to this criterion

⁴²⁴ Dallaire, *Shake Hands with the Devil*, 2–3.

precludes the participation of children. If these conditions could be met, then this criterion would be satisfied.

g. Just Transfer of Authority

After hostilities cease, is there a planned transfer of authority to either another agent of the principal or to a public authority, such as the UN?

Recall that this was Phase 4 of EO's proposed plan. It also highlights the burden that the principal bears; he must be prepared to extend the mission, with another agent if need be. An undertaking such as this would require the solemn acceptance of responsibility for the situation on the part of the principal; if the mission is not carried out to the point that a responsible entity can take over, it would not necessarily be the fault of the agent. The principal would not be absolved of his responsibility; he would have the duty to find another agent. Likewise, if the agent is unable to continue due to personnel shortages or overextension, he maintains a responsibility to notify the principal. In short, once begun, there must be a commitment to mission completion, whatever the cost.

3. Assessment

Military intervention in Rwanda during the genocide would have saved tens and possibly hundreds of thousands of lives.⁴²⁵ If EO's proposal seemed expensive to the UNSC, it should be considered that the UN operation that eventually deployed there conducted a humanitarian relief mission at a cost of \$3 million per day, which is about five times the estimated cost of EO's plan.⁴²⁶ Although the EO force could not have prevented the genocide, in spite of its close proximity in South Africa, this conclusion is no different than that of a public force. Furthermore, analysis of a private intervention funded by a private individual revealed some additional considerations that are not much different than the requirements of a state or international organization, including the will to see the mission through, proof that no other intervention is imminent, and the need for

⁴²⁵ Singer, *Corporate Warriors*, 185.

⁴²⁶ Singer, *Corporate Warriors*, 186.

an altruistic motive on the part of the principal. Conditions that were found to be required for an ethically justified private intervention in Rwanda are summarized in Table 6:

Criterion	Counterfactual solution
Right Authority	Sufficient assets available to achieve any degree of success; principal must have the resources to extend the mission
Just Cause	<i>Proof</i> of genocide obtained by the principal; proof that no other intervention is imminent
Right Intention	Establishment of safe havens; also right <i>motivation</i> on the part of the principal
Discrimination	Restricted to groups that demonstrate hostile intent towards civilians
Proportionality	ROE approved and enforced by the principal
Internal <i>jus in bello</i>	Life insurance, family care; restrictions on the use of child soldiers
Just Transfer of Authority	A commitment to just termination of hostilities; principal prepared to extend the mission; early coordination with UN or other entity for transfer of authority

Table 6. Summary of findings, Rwanda genocide thought experiment

The notion of a private individual as the principal in a humanitarian intervention should not be considered lightly. Even if all of these conditions are met and there is a just cause, no one else is willing to intervene, and the principal both has and is willing to use the resources necessary to save people's lives, a billionaire who hires a private army and invades a country, regardless of the antecedent conditions, would most likely be met with international condemnation. To be morally right is perhaps a necessary, but not sufficient condition for the private intervention described here. In the Rwanda case, the actual history of intervention in 1994 is a history of regret, shame, and apology. However, if a private intervention had occurred and a wealthy individual funded a large private military force that saved thousands of lives, history might treat the incident differently; instead of shame, the story would be one of people who rose up against a great evil and fought against it, in spite of the personal cost.

D. SUMMARY OF FINDINGS

A consolidated summary of the findings from all three cases is presented in Table 7. Consideration of each criterion individually, with findings from all three case studies beside it, is valuable in that it reveals conditions that may not have been previously apparent. For right authority to be true, it is now understood that the agent not only must possess a sufficient degree of effectiveness, the principal must also be in possession of sufficient resources to extend the mission if necessary. Under the just cause criterion, it becomes apparent that proof of crimes against humanity is not sufficient in an intervention conducted by a hired force; a just cause for a principal with the aim of funding an intervention outside of a state apparatus requires evidence that no other intervention is imminent as well. Furthermore, to satisfy right intention, a non-state actor operating as principal must possess an altruistic motive as well. To satisfy the principle of discrimination, there must be mechanisms in place for the proper treatment of prisoners, in addition to tactics that reduce civilian casualties, including the acceptance of increased risk. Under the principle of proportionality, while an established an accepted ROE is critical for any armed force operating in hostile territory, in the analysis of these cases it becomes apparent that the principal must be involved in the rewards and punishments that result from the adherence, or non-adherence, to the ROE. The principle of internal *jus in bello* for PMCs also becomes important not only for the protection of the PMC's troops, but also for the protection of the troops' families, if an employee of the PMC is harmed or killed while carrying out his duties. Finally, the principle of just transfer of authority is demonstrated to be a valuable criterion in the *just post bello* treatment of the authority an armed force takes on when it seizes territory; it would not be able to hold that territory indefinitely. A predetermined plan to transfer that authority is necessary for a just termination of hostilities and the eventual return to normalcy for the affected population. These findings do not result in any new criteria for the theory, but they do help refine the conditions under which each criterion may be satisfied. Overall, the findings show that the theory of ethically justified private intervention can be an effective moral guideline for a humanitarian intervention.

Criterion	EO in Sierra Leone
	Sandline in PNG
	Hypothetical EO in Rwanda
Right Authority	True for the case; EO achieved victory over the RUF and temporary stability for Sierra Leone
	Sandline's maneuver, firepower intelligence, and control capabilities; PSYOP to aid the support of the population
	Sufficient assets available to achieve any degree of success; principal must have the resources to extend the mission
Just Cause	RUF atrocities against civilian population; observed by EO troops
	Crimes against humanity possibly taking place at "care centers"
	<i>Proof</i> of genocide obtained by the principal; proof that no other intervention is imminent
Right Intention	A stability level sufficient to hold elections
	Liberation of "care centers"
	Establishment of safe havens; also right <i>motivation</i> on the part of the principal
Discrimination	Systems for protection and care of prisoners; training and example-setting in law of war for partner forces
	Electronic surveillance to locate targets; ground-based operation for positive identification
	Restricted to groups that demonstrate hostile intent towards civilians
Proportionality	Established ROE; no evidence of unjust proportions
	Ground operations; restrictions on use of helicopter gunships
	ROE approved and enforced by the principal
Internal <i>jus in bello</i>	Satisfactory protection; sufficient casualty care
	Life insurance; family care
	Life insurance, family care; restrictions on the use of child soldiers
Just Transfer of Authority	Executed plan for just termination of hostilities; coordination with UN or other entity for transfer of authority
	Executed plan for just termination of hostilities; coordination with UN or other entity for transfer of authority
	A commitment to just termination of hostilities; principal prepared to extend the mission; early coordination with UN or other entity for transfer of authority

Table 7. Consolidated summary of findings

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VII. CONCLUSION

To those for whom the greatest threat to the future of the international order is the use of force in the absence of a Security Council mandate, one might ask – not in the context of Kosovo – but in the context of Rwanda: If, in those dark days and hours leading up to the genocide, a coalition of States had been prepared to act in defense of the Tutsi population, but did not receive prompt Council authorization, should such a coalition have stood aside and allowed the horror to unfold?⁴²⁷

The arguments presented here flow into the theory of ethically justified private intervention and help formulate the principles of which it is made; the first argument is that humanitarian intervention is obligatory, the second argument is that states have an obligation to protect its citizens, the third argument presents PMCs as a morally viable option. Using Just War Theory and Pattison's Moderate Instrumentalist Approach to humanitarian intervention, theory of ethically justified private intervention is meant to be uniquely suited as a guideline to relieve the moral tension that is at the root of the international community's failure to act in the face of crimes against humanity.

The methods used to test the theory here are admittedly artificial; while some real data is used in the case studies, the counterfactuals are better described as thought experiments. The intended result is satisfactory, however. By considering the criteria of the theory, even in a spurious scenario, the aim of refining the conditions under which a privately funded, privately executed humanitarian intervention would be morally permissible has been achieved. The results derived from the study are presented in Table 8.

⁴²⁷ Kofi Annan, quoted in Richard Caplan, "Humanitarian Intervention: Which Way Forward?" in *Just Intervention*, ed. Anthony F. Lang, Jr. (Washington, DC: Georgetown University Press, 2003), 132.

Criterion	Test
Right Authority	Does the intervener possess local external effectiveness: an ability to end the crisis? <i>Does the principal have the resources to extend the mission?</i>
Just Cause	Is there proof of crimes against humanity? Is the intervention a response to physical violence? <i>Is no other intervention imminent?</i>
Right Intention	Is there a humanitarian-based end state? <i>Are the motives of the principal humanitarian-based?</i>
Discrimination	Does the agent discriminate between permissible and impermissible targets? Are there attempts to mitigate the effects of collateral damage? <i>Are there provisions for the proper treatment of prisoners?</i>
Proportionality	Are there formal Rules of Engagement (ROE)? Are employees trained in the use of aimed, proportionate fire, and appropriate weapons systems for threat response? <i>Is there a system of rewards and punishment enforced by the principal?</i>
Internal <i>jus in bello</i>	Is there appropriate protection for the PMCs own employees? <i>Have the employees' families been provided with adequate insurance?</i>
Just Transfer of Authority	After hostilities cease, is there a planned transfer of authority to either another agent of the principal or to a public authority, such as the UN?

Table 8. The refined theory of ethically justified private intervention⁴²⁸

The utility of PMCs in the struggle to bring stability to the world should be studied further. The theory presented in this thesis is meant as a moral guideline; it does not provide a legal basis for private intervention. Furthermore, it does not provide a mechanism for accountability for the principal, who could be subject to myriad legal issues, in addition to the ethical temptations that arise in the absence of accountability. As such, accountability for the principal in the scenario of private intervention becomes a potential source of criticism. While there are laws and enforcement mechanisms in place, such as the International Criminal Court (ICC), they are notoriously ineffective and thus lack the standing required to potentially prosecute an individual or other entity with the means to employ a private army. Fortunately, the reality is that it would be highly unlikely for a scenario such as the one described here to actually happen, however plausible.

⁴²⁸ Emphasis on the added conditions based on the results of the case studies.

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